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सं. 39] नई दिल्ली, सितम्बर 18—सितम्बर 24, 2016, शनिवार/भाद्र 27—आश्विन 2, 1938
No. 39] NEW DELHI, SEPTEMBER 18—SEPTEMBER 24, 2016, SATURDAY/ BHADRA 27— ASVINA 2, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 20 सितम्बर, 2016

का.आ. 1950.—नियुक्ति संबंधी मंत्रिमंडलीय समिति के अनुमोदन के अनुसार, केन्द्रीय सरकार, एतद्वारा, ऋण वसूली अधिकरण (डीआरटी-II), दिल्ली के पीठासीन अधिकारी श्री गोट्टूमुक्कला वेंकट कृष्ण राजू को दिनांक 05.08.2016 से 31.12.2016 तक अथवा औद्योगिक एवं वित्तीय पुनर्निर्माण बोर्ड (बीआईएफआर) के समापन तक अथवा अगले आदेशों तक, जो भी पहले हो, बीआईएफआर के सदस्य के पद का अतिरिक्त कार्यभार सौंपती है।

[फा.सं. 20(02)/2011-आईएफ-II (खंड-III)]

राजीव शर्मा, अवर सचिव

MINISTRY OF FINANCE**(Department of Financial Services)**

New Delhi, the 20th September, 2016

S.O. 1950.—In accordance with ACC approval, the Central Government hereby assigns additional charge of the post of Member, Board for Industrial and Financial Reconstruction (BIFR) to Shri Gottumukkala Venkata Krishnan Raju, Presiding Officer, Debt Recovery Tribunal (DRT-II), Delhi, w.e.f. 05.08.2016 to 31.12.2016, or till abolition of BIFR, or until further orders, whichever is the earliest.

[F.No. 20(02)/2011-IF-II(Vol.III)]

RAJIV SHARMA, Under Secy.

विदेश मंत्रालय**(सी.पी.वी. प्रभाग)**

नई दिल्ली, 30 अगस्त, 2016

का.आ. 1951.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, स्टॉकहोम में श्री अमर नाथ शर्मा, सहायक अनुभाग अधिकारी को दिनांक 30 अगस्त, 2016 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS**(CPV DIVISION)**

New Delhi, the 30th August, 2016

S.O. 1951.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Amar Nath Sharma, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Stockholm to perform the Consular services with effect from 30 August, 2016.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय**(कार्मिक और प्रशिक्षण विभाग)**

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1952.—केंद्रीय सरकार एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा 1 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बिहार राज्य सरकार, गृह विभाग (पुलिस शाखा), पटना, बिहार की अधिसूचना सं. 1/सी.बी.आई.-80-06/2016 एच.पी.-3805 पटना, दिनांक 16 मई 2016 - द्वारा प्राप्त सहमति सिवान जिला के सिवान टाउन थाना के अंतर्गत श्री राजदेव रंजन की हत्या संबंधित सिवान टाउन थाना केस सं. 362/16, दिनांक 13.05.2016 में भारतीय दंड संहिता की धारा 302/120 बी/34 तथा 27 आर्म्स एक्ट के अंतर्गत उक्त अपराध से संबंधित प्रयासों, दुष्प्रेरणाओं और षडयंत्रों तथा उसी संव्यवहार में किए गए किन्हीं अन्य अपराधों के अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों को शक्तियों और अधिकारिता का विस्तार सम्पूर्ण बिहार राज्य में करती है।

[फा. सं. 228/21/2016-एवीडी-II]

डॉ. बी. वी. आर. सी. पुरुषोत्तम, उप सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**

New Delhi, the 14th September, 2016

S.O. 1952.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the consent of the State Government of Bihar, Home Department (Police Branch), Patna, Bihar vide Notification No.1/C.B.I- 80 - 06/2016 HP - 3805 Patna dated 16 May, 2016, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the state of Bihar for investigation of case No.362/16 dated 13.05.2016 U/s 302/120(B)/34 IPC and 27 Arms Act registered at Siwan Town, P.S (Bihar) relating to murder of Reporter Rajdev Ranjan and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F.No. 228/21/2016-AVD-II]

Dr. B. V. R. C. PURUSHOTTAM, Dy. Secy.

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1953.—केंद्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राजस्थान सरकार, गृह विभाग, सचिवालय, जयपुर द्वारा प्रेषित पत्र/ अधिसूचना सं. एफ.19(15)होम-5/2012 दिनांक 02.06.2014 द्वारा प्राप्त सहमति से प्राथमिकी सं. 293/2009 दिनांक 22.06.2009 थाना नोहर, जिला हनुमानगढ़ में दर्ज अपराधों के संबंध में या उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध या अपराधों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण राजस्थान राज्य में करती है।

[फा. सं. 228/40/2014-एवीडी-II]

एल. पी. शर्मा, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1953.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the consent of the State Government of Rajasthan, Home (Gr.V) Department, Jaipur vide Notification No.F.19(15)Home - 5/2012 dated 02.06.2014, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Rajasthan for the investigation of FIR No.293/2009 dated 22.06.2009 registered at Police Station Nohar, District Hanumangarh or any other offences committed in the course of the same transaction arising out of the said case.

[F. No. 228/40/2014-AVD-II]

L. P. SHARMA, Under Secy.

रेल मंत्रालय**(रेलवे बोर्ड)**

नई दिल्ली, 28 जून, 2016

का.आ. 1954.—रेल मंत्रालय (रेलवे बोर्ड), राजभाषा नियम 1976 (संघ के शासकीय प्रयोजनों के लिए प्रयोग) के नियम 10 के उपनियम(2) और (4) के अनुसरण में दक्षिण पूर्व रेल के नागपुर मंडल के रेल हेल्थ यूनिट, गोंदिया जहां 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करता है।

[सं. हिंदी 2015/रा.भा.1/12/2]

के. पी. सत्यानंदन, निदेशक, राजभाषा

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

New Delhi, the 28th June, 2016

S.O. 1954.—Ministry of Railways (Railway Board) in pursuance of Sub Rule(2) and (4) of Rule 10 of the Official Language Rules, 1976 (use for the Official purposes of the Union) hereby, notify The RAIL HEALTH UNIT, GONDIA of Nagpur Division, South East Central Railway, where 80% or more Officers/Employees have acquired the working knowledge of Hindi.

[No. Hindi 2015/O.L.-1/12/2]

K. P. SATHYANANDAN, Director (OL)

सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1955.—केंद्रीय सरकार, सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम, 2006 (2006 का 27) की धारा 3 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय में राज्यमंत्री श्री हरिभाई परथीभाई चौधरी को राष्ट्रीय सूक्ष्म, लघु और मध्यम उद्यम बोर्ड के पदेन उपाध्यक्ष के रूप में नियुक्त करती है और उक्त प्रयोजन के लिए भारत सरकार सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय की अधिसूचना संख्या का.आ.226(अ) तारीख 23 जनवरी, 2015 में निम्नलिखित संशोधन करती है, अर्थात्:-

उक्त अधिसूचना में क्रम संख्या 2 और उससे संबंधित प्रविष्टियों के पश्चात के लिए निम्नलिखित क्रम संख्या और प्रविष्टियां अतः स्थापित की जाएंगी, अर्थात् -

“ 2(क). श्री हरिभाई परथीभाई चौधरी, राज्यमंत्री

उपाध्यक्ष- पदेन”

सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय

[फा.सं. 1(19)/2013-एनबीएमएसएमई]

सुरेन्द्र नाथ त्रिपाठी, अपर सचिव

टिप्पण:- मुख्य अधिसूचना का.आ. 226(अ) तारीख 23 जनवरी, 2015 के अधीन भारत के राजपत्र, असाधारण में प्रकाशित की गई थी।

MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

New Delhi, the 15th September, 2016

S.O. 1955.—In exercise of the powers conferred by sub-section (3) of section 3 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), the Central Government hereby appoints Shri Haribhai Parathibhai Chaudhary, Minister of State in the Ministry of Micro, Small and Medium Enterprises as ex officio Vice-Chairperson of the National Board for Micro, Small and Medium Enterprises and for the said purpose makes the following amendment in the notification of the Government of India in the Ministry of Micro, Small and Medium Enterprises number S.O. 226(E), dated the 23rd January, 2015, namely:-

In the said notification after serial number 2 and the entries relating thereto, the following serial number and entries shall be inserted, namely :-

“2 (A) Shri Haribhai Parathibhai Chaudhary, Minister of
State, Ministry of Micro, Small and Medium Enterprises

Vice Chairperson –ex officio”

[F.No. 1(19)/2013-NBMSME]

SURENDRA NATH TRIPATHI, Addl. Secy.

Note: - The principal notification was published in the Gazette of India, Extraordinary vide number S.O. 226(E), dated 23rd January, 2015.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 6 जून, 2016

का.आ. 1956.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मिनिस्ट्री ऑफ कम्यूनिकेशन एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 287/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.06.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 6th June, 2016

S.O. 1956.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 287/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ministry of Communication and Others and their workman, which was received by the Central Government on 06.06.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sri Kewal Krishan, Presiding Officer**LCA No. 287/2013**

Registered on 14.5.2013

Sh. Sat Parkash S/o Sh. Jai Bhagwan, House No.34, Ward No.13,
Gali No.5, Amargarh Gamri Karnal, District Karnal

...Petitioner

Versus

1. Through its Secretary Ministry of Communication
Government of India, New Delhi.
2. The Chief Post Master General Haryana Circle Ambala.
3. The Superintendent of Post Offices Kurukshetra,
Division Kurukshetra.
4. The Senior Post Master Head Post Office Kurukshetra

...Respondents

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.
For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on:-28.04.2016

Sh. Sat Parkash, has filed this claim application under Section 33(C)(2) of the Industrial Disputes Act, 1947(hereinafter called the 'Act') for computation of salary as full time Chowkidar; on the averments that he was appointed on 17.8.1989 as part time Chowkidar and used to perform his duties from 5 PM to 9AM. His services were disengaged in July 2011 and now he perform his duty for 12 hours. The Government came out with a scheme called 'Casual Labourers'(Grant of Temporary Status and Regularization)Scheme dated 7.11.1989 and he is entitled to the

grant of temporary status under the said scheme. That various similar situated employees filed application before the Central Administrative Tribunal, Chandigarh and the orders were passed in their favour.

Being so, the workman is also entitled to wages as given to full time employees and the same be calculated and paid to him.

The respondent-management admitted that the workman was appointed as part time Chowkidar and has been continuing as such. He cannot claim parity with the employees who were employed on full time basis. That the case of the other employees who filed application before the Central Administrative Tribunal has no relevancy.

In support of their respective case, parties filed their affidavits and even Sat Prakash appeared in the witness-box and supported his case.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management and perused the file.

It was vehemently argued by Sh. Mehra, counsel for the workman that similarly situated workmen were granted temporary status under the 'Casual Labourers' (Grant of Temporary Status and Regularization) Scheme dated 7.11.1989 and since the workman has been discharging the same function, he is entitled to the said status as well wages as full time employees.

It is suffice to say that under Section 33(C)(2) of the Act, the Court can only compute the benefits in terms of money which the workman is entitled to and this Court is not to declare first the status of the workman and then calculate the amount. If the workman wants to get wages as full time employees, he is to approach to appropriate forum for the 'Grant of Temporary Status' under the said Rules and this Court cannot grant him the wages by considering him as full time employees as it is the case of the workman himself that he was appointed as part time Chowkidar, which is also supported by the letter (Annexure R1).

Thus, there is no merit in this application and the same is dismissed.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 23 अगस्त, 2016

का.आ. 1957.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 110/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.08.2016 को प्राप्त हुआ था।

[सं. एल-40011/06/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 23rd August, 2016

S.O. 1957.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 110 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 23.08.2016.

[No. L-40011/06/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 18th day of March, 2016

INDUSTRIAL DISPUTE No. 110/2014

Between:

1. The District Secretary,
National Union of BSNL Workers FNT0,
West Godavari District,
Eluru.

2. The District Secretary,
Telecom Employees Progressive Union,
W.G.Distt Branch, Eluru-2

...Petitioner/Union

AND

The General Manager,
Telecom District, BSNL,
Eluru, W.G.Dist.,

...Respondent

Appearances :

For the Petitioner : Sri William Burra, Advocate
For the Respondent : Party in person/Representative

AWARD

The Government of India, Ministry of Labour by its order No. L-40011/06/2014-IR(DU) dated 2.6.2014 referred the following dispute between the management of Bharat Sanchar Nigam Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

“Whether the demands of the workmen of BSNL, Eluru is legal and justified? If not, what other relief the workmen are entitled to?”

The reference is numbered in this Tribunal as I.D. No. 110/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of documents by the Petitioner.
3. In spite of availing several opportunities to file documents, the Petitioner union failed to file documents and remained absent. No steps are taken on their behalf in spite of repeated calls which clearly indicates that the dispute of the Petitioner union has already been settled. In the circumstances stated above, it is felt that the Petitioner union has got no claim to raise. Hence, ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 18th day of March, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1958.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 23/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.09.2016 को प्राप्त हुआ था।

[सं. एल-20012/08/2009-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th September, 2016

S.O. 1958.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 23 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 14.09.2016.

[No. L-20012/08/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of Reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 23/2009

Employer in relation to the management of Amlo Project, M/s. CCL

AND

Their workman

Present : Shri R. K. Saran, Presiding officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri S.N. Ghosh, Advocate

State : Jharkhand

Industry:-Coal

Dated 23/08/2016

AWARD

By order No. L-20012/08/2009-IR (CM-1) dated 09/04/2009, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Amlo Project of M/s. CCL in not providing dependant employment to Miss Uttari Kumari, d/o Late Maharathi, Driver under the provision of NCWA is justified and legal? (ii) To, what relief is the dependant daughter of Late Maharathi entitled?”

2. The case is received from the Ministry of Labour on 24.04.2009. After receipt of reference, both Parties are noticed, the Workman files their written statement on 04.06.2009. The management files their written statement-cum-rejoinder on 03.03.2010. One witness each examined by both side. And documents of workman is marked as W-1 to W-4. Management's documents marked as M-1 to M-6.

2. The case of the workman is that Late Maharathi was a permanent employee of Amlo Project working as a Driver who died on 24.02.2002 while in service of M/s. CCL. Miss Uttari Kumar is the legal unmarried daughter of Late Maharathi who is entitled to employment of dependant of the deceased employee under the provision of NCWA.

3. It is also submitted by the workman that the photo Medical Card issued by the management, Miss Uttari Kumari has been shown as the daughter of Late Maharathi, and she has been provided free treatment by the employer from time to time as the daughter of the deceased employee.

4. It is further submitted by the workman that CMPF department accumulation of Late Masharathi to Miss Uttari Kumari as daughter of Late Maharathi and issue cheque to the name of Miss Uttari Kumari and ALC Hazaribagh also vide his order dated 27.01.2004 allowed Gratuity to Miss Uttari Kumari being one of the share to her from gratuity amount as one of the daughter of deceased, all material facts available on the record of the employer but application of miss Uttari kumari for employment on compassionate ground under NCWA was rejected by the management hence Industrial dispute arose.

5. On the other hand, the case of the management is that Late Maharathi, Ex-driver of Amlo Project was an employee has expired on 27.04.2002. The deceased employee submitted service excerpt, LTC option form before the

management and according to the service sheet Smt. Tulsimati Devi , Uma Kumar and Gayatri Kumari are his dependent.

6. It is further submitted by the management that deceased employee has not informed the management during his life time that Miss Uttari Kumari is his daughter and the name of Uttari Kumari as daughter does not appear in the service sheet and in any other record like DHO-16, LTC Option ect. As per provision of NCWA is provided to the dependant whose name appears in the company's record but the name of Uttari Kumari does not appears in any record of company . As such she is not entitled for compassionate employment.

7. The applicant claims for job in the place of her deceased father and file documents that she is the daughter of the deceased but the management submitted that the name of the applicant does not find place in the service excerpt of the workman, hence they do not believe that the applicant is the daughter of the workman. The applicant files school leaving certificate, Medical Card . Moreover on the death certificate of the workman , the name of daughter Uttari Kumari applicant finds place.

8. The management could not produce, any material or document that the documents filed by the applicant are false. Moreover the witness of the management Mr. Victor Kujur (MW-1) admitted that the Gratuity amount has been paid to the applicant. Hence the management is directed to give the applicant job atonce , of course after verifying her proper identification afresh.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1959.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 14/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.09.2016 को प्राप्त हुआ था।

[सं. एल-20012/379/2000-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th September, 2016

S.O. 1959.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 14 of 2001) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 14.09.2016.

[No. L-20012/379/2000-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 14/2001

Employer in relation to the management of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding officer

Appearances :

For the Employers : Shri U.N. Lall, Advocate

For the workman : Shri K.N. Singh, Advocate

State : Jharkhand

Industry:-Coal

Dated 25/08/2016

AWARD

By order No. L-20012/379/ 2000 /IR (C-1)) dated 12/01/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/s BCCL in denying to regularize the services of the workman Shri Akhileshwar Tewari, working as Driver Since 25/27.06.1991 in Golakdih open cast project of M/s BCCL is legal and justified? If not, to what relief is the workman entitled and from what date ?”

2. After receipt of the reference , both parties are noticed. But appearing for certain dates, Ld Counsel for the workman submits that workman is not interested. to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1960.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 166/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.09.2016 को प्राप्त हुआ था।

[सं. एल-20012/64/1994-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th September, 2016

S.O. 1960.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 166 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 14.09.2016.

[No. L-20012/64/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of Reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 166/1994

Employer in relation to the management of Govindpur Area M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding officer

Appearances :

For the Employers : None

For the workman : Shri S.C. Gour, Advocate

State : Jharkhand

Industry:-Coal

Dated 18/08/2016

AWARD

By order No. L-20012/64/ 1994 /IR (C-1)) dated 25/27.07.1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the General manager, Govindpur Area No. III M/s. BCCL P.O. Sonardih (Dhanbad) in striking off the name of Shri Mangra manjhi, Badli Mine/ Loader from the rolls of the company is justified? If not, to what relief is the concerned workman entitled-?”

2. After receipt of the reference , both parties are noticed. But appearing for certain dates, Ld Counsel for the workman submits that workman is not interested. to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1961.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 231/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.09.2016 को प्राप्त हुआ था।

[सं. एल-20012/211/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th September, 2016

S.O. 1961.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 231 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 14.09.2016.

[No. L-20012/211/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of Reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 231/1994

Employer in relation to the management of Keshalpur Colliery of M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding officer

Appearances :

For the Employers : None

For the workman : None

State : Jharkhand

Industry:-Coal

Dated 19/08/2016

AWARD

By order No. L-20012 /211/1994-IR(C-1) dated 31/08/1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Keshalpur Colliery of M/s. BCCL in not paying subsistence allowance w.e.f. 18/02/1991 and dismissing Sri Raja Ram B.P. Ex – Miner/ Loader w.e.f. 5/6 .11. 92 is justified? If not, to what relief the concerned workman is entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1962.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 89/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.09.2016 को प्राप्त हुआ था।

[सं. एल-20012/303/2002-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th September, 2016

S.O. 1962.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 89 of 2003) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 14.09.2016.

[No. L-20012/303/2002-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of Reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 89/2003

Employer in relation to the management of Govindpur Area, M/s. BCCL

AND

Their workman

Present : Shri R. K. Saran, Presiding officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri K.N. Singh, Rep.

State : Jharkhand

Industry:-Coal

Dated 22/08/2016

AWARD

By order No. L-20012/303/2002-IR (CM-1) dated 19/08/2003, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Akashkinari Colliery in denying employment to Sri Laxmi Prasad Kewat S/O Late Hiru Kewat after the death of Late Hiru Kewat, P/Loader is legal and justified? If not, what relief the son of deceased employee is entitled to?”

2. The case is received from the Ministry of Labour on 06.10.2003. After receipt of reference, both Parties are noticed, But after long delay the Sponsoring Union files their written statement on 28.01.2005. The management also long delay files their written statement-cum-rejoinder on 08.02.2012. One witness examined on behalf of the Workman and document of workman is marked as W-1 to W-5.

2. The case of the workman is that Late Hiru Kewat was a permanent employee of Akashkinari Colliery designated as P/Loader operator who died on 14.03.1994 due to fatal accident in mine while on duty but at the time of death of the employee the dependant son of the employee was minor and as such it was decided and agreed by the management on 15.03.1994 to provide his son Laxmi Kewat in employment as soon as he will attain the age of eighteen years.
3. It is also submitted by the workman that after attaining the age of eighteen years, the said dependant son of the employee submitted an application on 10.10.2000 in view of agreement dated 15.03.1994 between the union and the management but the management did not take any action. Hence Industrial dispute arose.
4. On the other hand the case of the management is that late Hiru Kewat an employee of Akashkinari Colliery, who died on 14.03.1994, but after the death of concerned workman none of his dependant applied for employment under compassionate ground. But lapse of several years. Sri Laxmi Kewat submitted an application for employment on compassionate ground stating therein that at the time of death of his father he was minor and now he became major.
5. It is also submitted by the management that there is no provision to reserve the employment for minor sons of the employee and the dependant of an employee has got no vested right to get employment whenever they submit application.
6. The applicant files an application to the management for dependant employment, But the management regretted the application on the ground of delay. The deceased workman died while on job in the year 1994. The applicant, son of deceased workman applied for job in the year 2000. His claim was at the time of death of his father he was minor and after attaining majority he applied job.
7. Management's case that there was no provision in NCWA to take person in job who applied for job in lapse of time.
8. As per Ext-W-2 written by Dy Chief personal Manager, Govindpur Area, in which he admitted that "It is a fact that an agreement was signed to provide employment to the son of Lt. Hiru Kewat on attaining the age of 18 years" It is also a fact that the dependant son Sri Laxmi Kewat applied for employment in the year 1999 which was forwarded in BCCL Hq for approval" The agreement arrived between the Sponsoring Union and the Higher level Management marked as Ext W-5 in which the management agree for employment of Laxmi Prasad Kewat dependant son of deceased workman.
9. Premature death gives blow to the family where there is minor children, condition is more serious. However the workman applied for job in 1999, by now 17 years is going to pass.
10. Considering the facts and circumstances of this case, I hold that the action of the management of Akashkinari Colliery in denying employment to Sri Laxmi Prasad Kewat S/O Late Hiru Kewat after the death of Late Hiru Kewat, P/Loader is not legal and justified. Therefore the management is directed to take the applicant in job in place of his father within 30 days from the publication of the award in Gazette of India.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1963.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन रेयर अर्थ लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ सं. 9/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-29012/12/2010-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1963.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2012) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Indian Rare Earths Ltd. and their workman, which was received by the Central Government on 09.09.2016.

[No. L-29012/12/2010-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM****Present:** Shri. K. Sasidharan , B.Sc., LL.B, Presiding Officer(Tuesday the 02nd day of August, 2016/11th Shravana, 1938)**ID No. 9/2012**

Workman	:	Shri. V. Nandakumar, Nandanam, Puthucadu, PO Chavara, Kollam District (Kerala). By Adv. Shri. Aype Joseph
Managements	:	1. The Head, Indian Rare Earths Limited, Chavara PO, Distt. Kollam, Kollam (Kerala) – 691583. 2. The Chief General Manager, Indian Rare Earths Ltd., Chavara, Chavara (Kerala) – 691583. By M/s. Menon & Pai

This case coming up for final hearing on 12.07.2016 and this Tribunal-cum-Labour Court on 02.08.2016 passed the following:

AWARD

This is a reference under Section 10 sub-sections (1) clause (d) and (2A) of the Industrial Disputes Act, 1947 (Act 14 of 1947).

2. The dispute referred for adjudication is:

“Whether the action of the management of Indian Rare Earths Ltd., Chavara in dismissing the services of Shri V. Nandhakumar, Ex. Clerk-cum-Typist w.e.f.11/12/2009 is justified? What relief the workman is entitled?”

3. The dispute was originally referred before the Central Government Industrial Tribunal-cum-Labour Court, Chennai for adjudication. Subsequently as per the order dated 06.12.2011 in WP(C) No.28005/2011, the Hon’ble High Court of Kerala directed to withdraw the dispute from Central Government Industrial Tribunal-cum-Labour Court, Chennai and transfer to the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam. Accordingly, as per Corrigendum No.L-29012/12/2010-IR(M) dated 31.10.2011 the dispute was referred to this Tribunal for adjudication.

4. After the receipt of reference Order No.L-29012/12/2010-IR(M), issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear, submit their pleadings and produce documents to substantiate their respective contentions. On receipt of the summons the parties entered appearance through counsel and submitted their pleadings.

5. The contentions in the claim statement filed by the workman in brief are as follows:

The workman involved in this reference Shri Nandakumar. V was employed as junior Clerk-cum-Typist in the management company. He applied for granting earned leave from 25.05.2007 to 07.06.2007 for the purpose of nursing his father-in-law, who was sick and bedridden at Sharjah. The leave request was granted. At his request extension of leave was granted from 08.06.2007 to 07.07.2007. On the expiry of the leave sanctioned by the management, he did not join duty since the condition of his father-in-law was serious and there was nobody to look after the affairs. Accordingly he applied for extension of leave. In the meantime he was bedridden due to chickenpox and could not return back from Sharjah. He applied for extension of leave due to ailment. In the meantime the management initiated disciplinary proceedings against the workman alleging unauthorized absence.

6. The charges levelled against the workman are not sustainable in law. The enquiry conducted by the management was without following the principles of natural justice and without affording reasonable opportunity to the workman to substantiate his contentions. On 15.07.2008 the workman requested the enquiry officer to postpone the enquiry for the reason that he underwent surgery at the Holy Cross Hospital, Kottiyam. He produced a medical

certificate along with the request for postponing of enquiry. The enquiry officer failed to consider the request made by the workman. He proceeded with the enquiry and submitted an ex-parte enquiry report. Based on that report, the management dismissed the workman from service with immediate effect.

7. According to the workman the finding of the enquiry officer is vitiated on the ground of malafides, non-application of mind, not affording reasonable opportunity to the workman to substantiate his contentions and without following the principles of natural justice. The workman has stated that the punishment imposed by the management is harsh and highly disproportionate in relation to the charges framed against the workman. The workman has requested to pass an award setting aside the punishment, to reinstate him with full back wages, continuity of service and all other benefits thereof.

8. The contentions in the written statement filed by the management in brief are as follows:

The workman Shri V. Nandakumar joined the services of the management on 01.01.1994 as a worker (Bag stitching). Subsequently he was promoted and redesignated as junior Clerk-cum-Typist on 01.01.2004. While in service he applied for leave for the period from 25.05.2007 to 07.06.2007 and his request was allowed. Subsequently he requested for extension of leave from 08.06.2007 to 07.07.2007. His request was allowed by the management. On the expiry of the leave granted he failed to report for duty on 08.07.2007. As per the letter dated 13.08.2007 the management directed the workman to report for duty on or before 31.08.2007. The letter sent by the management by post to his last known address was returned un-served with the endorsement that the "Addressee Left India", returned to sender". Again as per letter dated 08.09.2007 the management directed the workman to report for duty on or before 20.09.2007. That letter was received by the workman and the management obtained postal acknowledgment evidencing for the receipt of that letter by the workman. Even after the receipt of that letter the workman failed to report for duty. He failed to inform the management explaining the reason for his absence from duty. Thereafter the management issued a show-cause memo dated 01.10.2007 to the workman. He has not submitted any reply to the show-cause notice. Therefore the management issued a charge sheet dated 16.11.2007 to the workman. The charge sheet cum enquiry notice was sent by Registered Post to his last known address and his known address in Sharjah. Both of them were returned un-served. Accordingly, the management charge sheeted the workman as per clauses 41(1) and 41(21) of the standing orders applicable to the workman under the management. The management ordered an enquiry by appointing Shri R. V. Viswanath, Manager(Projects) as enquiry officer. As per letter dated 16.11.2007 the disciplinary authority directed the workman to appear before the enquiry officer on 10.12.2007. On that day the workman failed to turn up for enquiry. He did not inform the reason for his absence. Again vide notice dated 13.12.2007, intimation was given to the workman to report for enquiry on 10.01.2008. The said letter was returned by the postal authorities with the endorsement that "Addressee Left India". He did not report before the enquiry officer on 10.01.2008. Again a notice dated 05.04.2008 was issued to the workman directing to appear before the enquiry officer on 28.04.2008. He acknowledged the same and failed to report for enquiry on 28.04.2008. Instead he sent a letter dated 25.04.2008 informing that he is continuing treatment for chickenpox and expressed willingness to appear before the enquiry after curing the ailment.

9. As per letter dated 20.05.2008 the enquiry was scheduled to be held on 16.06.2008. The workman acknowledged the same and made a request to prepone the date of enquiry. At his request the enquiry was preponed to 03.06.2008. On that day he failed to attend the enquiry. On 10.06.2008 as per the oral request of the workman the enquiry was postponed to 12.06.2008. As per letter dated 15.07.2008 the workman intimated the disciplinary authority that he is not in a position to attend the enquiry till 15.10.2008 since he underwent a surgery and taking rest.

10. Subsequently as per the notice dated 06.01.2009 the date of enquiry was scheduled to be held on 24.01.2009 and intimation regarding the same was given to the workman. The workman failed to report before the enquiry officer on 24.01.2009. On that day the enquiry officer proceeded with the enquiry, recorded the evidence of the witnesses on behalf of the management. On the basis of the available records and evidence adduced, the enquiry officer submitted the report before the management with the finding that the workman is guilty in respect of the charges levelled against him. The management issued the punishment order after complying all the procedural formalities and the workman was dismissed from service w.e.f.11.12.2009.

11. The reason for the absence from duty, stated by the workman is not true to facts. The punishment imposed by the management is in proportion to the gravity of the charges levelled against the workman. The enquiry officer conducted the enquiry in a fair, just and proper manner and by following the principles of natural justice. The conduct of the workman reveals that he is not interested in continuing employment under the management. The management has requested to uphold their contentions and reject the claim of the workman.

12. After filing written statement by the management, the workman filed rejoinder reiterating the contentions in the claim statement.

13. Thereafter opportunity was afforded to the parties to take steps and produce documents to substantiate their contentions. The management produced the enquiry file. As requested by the learned counsel for the management the validity of the domestic enquiry was considered as a preliminary point. On that aspect, on behalf of the management, the enquiry officer was examined as MW1 and the enquiry file was marked as Ext.M1. As per the Preliminary Order dated 04.03.2016 this Tribunal held that the enquiry conducted by the management is valid, just and proper. Thereafter the learned counsel appearing for both sides were heard.

14. The points arising for consideration are:

- “(i) Whether the disciplinary proceedings initiated by the management against the workman Shri V. Nandakumar is just and proper?”**
- (ii) Whether the punishment imposed by the management is in proportion to the gravity of the misconduct alleged by the management?**
- (iii) To what relief the workman is entitled?”**

15. Point Nos.(i) to (iii):- The workman involved in this reference Shri V. Nandakumar joined the services of the management on 01.01.1994 as a worker (bag stitching). He was subsequently promoted and redesignated as junior Clerk-cum-Typist on 01.01.2004. He applied for earned leave for the period from 25.05.2007 to 07.06.2007 for the purpose of nursing his father-in-law who was bedridden at Sharjah. His request was allowed by the management. Subsequently he requested for extension of leave from 08.06.2007 to 07.07.2007. His request was allowed by the management. The workman has stated that after the expiry of the extended tenure of leave, he could not rejoin duty for the reason that the health condition of his father-in-law was serious and there was nobody to look after the affairs. He has stated that in the meantime he was affected with chickenpox and could not return from Sharjah. He sought extension of leave on medical ground. According to the workman the management in the meantime initiated disciplinary proceedings against him for unauthorized absence. He has stated that he could not report for duty for the reason that he underwent surgery and continuing treatment thereafter. It is stated that the workman requested the management to sanction leave and it is supported by a medical certificate issued by the doctor. The grievance of the workman is that the management failed to appreciate the factual state of affairs in the correct perspective. Instead they ordered disciplinary proceedings and appointed an enquiry officer to conduct an enquiry in relation to the charges levelled against him. According to the workman the initiation of disciplinary proceedings against him by the management and the proceedings of domestic enquiry by the enquiry officer are vitiated for want of natural justice and failure on the part of the management to allow reasonable opportunity to the workman to substantiate his contentions. The workman has stated that at any rate the punishment of dismissal from service imposed by the management is highly disproportionate in relation to the gravity of the charges alleged by them.

16. The management has refuted the allegations made by the workman. According to them the workman unauthorisedly absented from duty and failed to appear before the enquiry officer even after granting sufficient opportunity. The management has stated that they proceeded against the workman after issuing the show cause notice dated 01.10.2007. It is stated that the workman failed to report for duty even after granting repeated opportunities. It is stated that the workman has committed misconduct as stipulated under clauses 41(1) and 41(21) of the standing orders of the management company.

17. The contention of the workman is that the enquiry is vitiated for the reason that the enquiry officer failed to provide sufficient opportunity to the delinquent or his representative. According to the management there was willful default on the part of the workman in reporting for duty.

18. While examined as MW1 the enquiry officer has stated about the procedure followed during the enquiry. MW1 has stated that he has submitted an enquiry report after evaluating the evidence tendered during the proceedings.

19. The learned counsel for the workman submitted that the workman could not report for duty initially for the reason that his father-in-law was bedridden and subsequently for the reason that the workman underwent surgery and bedridden. It is stated that the punishment of dismissal from service for unauthorized absence imposed by the management is highly disproportionate.

20. The learned counsel for the management submitted that the punishment imposed is just, proper and in consonance with the gravity of the misconduct committed by the workman.

21. Admittedly the charge against the workman is unauthorized absence. It is true that a workman who is employed in an industry has to perform his duties with due diligence, promptness and efficiency. In this case there were laches on the part of the workman in reporting for duty on the expiry of the leave granted by the management. The workman failed to report before the enquiry officer even after obtaining sufficient opportunity. The explanation of the workman is that he was bedridden, underwent surgery and taking rest and hence he could not report before the enquiry officer.

22. On going through the documents marked in the domestic enquiry and the evidence tendered by MW1 probalilise the fact that the workman absented from duty from 25.05.2007. It is submitted that the workman had no bad remarks in his career under the management. Considering the fact that the workman had gone to Sharjah to nurse his ailing father-in-law and at a later stage he was bedridden due to ailment, it cannot be held that the punishment of dismissal from service imposed by the management is in consonance with the gravity of misconduct committed by the workman. Except the allegation of unauthorized absence there is no other charge against the workman. The fact that the workman had to look after his ailing father-in-law is a mitigating circumstance enabling this Tribunal to reduce the quantum of punishment imposed by the management.

23. Considering the factual state of affairs and that there is no bad remark against the workman while he was in service it will only be just and reasonable to set aside the punishment of dismissal from service and to direct the management to allow the workman to rejoin duty. It is made clear that the workman will not be entitled to get salary during the period he was out of service from the management company. He shall be reinstated within two months from the date of publication of award in this case. He shall get the benefit of continuity of service while calculating the period of employment. He shall not be entitled any other benefit other than the continuity of service. The points are answered accordingly.

24. In view of the finding on the points for consideration the dispute referred for adjudication is answered as follows:

“that the workman shall be allowed to rejoin duty within two months from the date of publication of this Award. The period from the date of dismissal till reinstatement shall be treated as ‘period not on duty’. He shall not be entitled to get wages and other benefits during the period he was not on duty. He will get continuity of service for the purpose of calculating service benefits.”

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 02nd day of August, 2016.

SASIDHARAN K., Presiding Officer

APPENDIX

Witness for the workman

NIL

Witness for the managements

MW1 27.10.2014 Shri. R. V. Viswanath

Exhibit for the workman

NIL

Exhibit for the managements

M1 - Enquiry file

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1964.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ सं. 54/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-11012/13/2007-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1964.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2007) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s. Airport Authority of India and their workman, which was received by the Central Government on 09.09.2016.

[No. L-11012/13/2007-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer/Judge

REFERENCE NO. CGIT-2/ 54 of 2007

EMPLOYERS IN RELATION TO THE MANAGEMENT OF AIRPORT AUTHORITY OF INDIA

The Airport Director
M/s. Airport Authority of India
CST International Airport
International Airport Division
Mumbai- 400 099

AND

THEIR WORKMEN

Shri Ashok Kumar Khandekar
Arjun Chawl, Room No. 2
Tank Pakhedi
Sahar, Andheri (E)
Mumbai- 400 099

APPEARANCES:

FOR THE EMPLOYER : Mrs. Geeta Raju, Advocate i/b.
M/s. M.V. Kini & Co.

FOR THE WORKMAN : Mr. J.H. Sawant, Advocate.

Mumbai, dated the 20th July, 2016.

AWARD

1. Government of India Ministry of Labour and Employment by its order No L-11012/13/2007- IR(M) dated 22/10/2007 in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal.

“Whether the demand of the workman Shri Ashok Khandekar for reinstatement in service of the Airport Authority of India, Mumbai in view of the Judgment of Conviction stayed by the Hon’ble High Court of Rajasthan vide his application No. 1038 of 2004 is justified and proper? If so, what relief the workman is entitled to? If not, then, what Order?”

2. After receipt of Reference, notices were issued to both the parties. In response to the notices second party workman has filed Statement of Claim (Ex-6). According to the workman, he was employed by the first party management of Airports Authority of India, Mumbai w.e.f. 16/08/1995 in the capacity of Draughtsman Grade II (Electrical). The said post has been re-designed as Senior Assistant (Drawing Electrical). However, by order dated 13/1/1998, he was placed under suspension w.e.f. 31/1/1998 on the ground that the case against him in respect of criminal offence was under investigation. The Airport Director of the first party by his order dated 1/3/2002 revoked the suspension and allowed him to report for his duty on and from 13/3/2002 without prejudice to the right of the first party to take such disciplinary action and to treat the period of suspension as may be warranting based on the final outcome of the court verdict. Thus the Airport Director, of the first party by order dated 8/7/2004 imposed him the penalty of Compulsory Retirement w.e.f. 8/7/2004 on the ground that the Hon'ble Additional District Judge No1 (Fast Track), Jaipur by order dated 25/11/2013 has punished him for three years imprisonment and fined Rs. 10,000/-.

3. According to the second party workman, he preferred Appeal dated 6/8/2004 to the Member (Personnel and Administration) of the first party against the order dated 8/7/2004 passed by the Airport Director of the first party. He in continuation to his Appeal dated 6/8/2004 submitted Additional Appeal dated 6/6/2005 to the Appellate Authority bringing to his notice that the Hon'ble Rajasthan High Court by order dated 2/6/2005 in Application No. 1038 of 2004 in S.B. Criminal Appeal No. 1712 of 2003 was pleased to stay the Judgment of Conviction dated 25/11/2003 passed by Learned Additional Session Judge No. 1 (Fast Track) during the pendency of appeal. Therefore, he is entitled to be reinstated in service by setting aside the punishment order dated 8/7/2004 passed by the Airport Director of the first party. According to workman, since Hon'ble Rajasthan High Court was pleased to stay the Judgment of Conviction 25/11/2003, the punishment order dated 8/7/2004 passed by the first party only on the basis of the said Judgment of Conviction, is liable to be set aside and he is entitled to be reinstated in service. However, the Assistant Manager of the first party by his letter dated 12/1/2007 informed the second party that the Appellate Authority has decided not to interfere in the punishment order dated 8/7/2004. Therefore, workman raised an Industrial Dispute before the Assistant Labour Commissioner (Central), Mumbai for his reinstatement in services. Therefore second party workman prays that he be reinstated in services w.e.f. 8/7/2004 with full back wages and consequential benefits by setting aside or modifying the punishment order dated 8/7/2004.

4. The first party resisted the Written Statement in reply to the statement of claim of the workman Ex-9. According to them, second party workman was arrested by Jaipur Police on 27/12/1997; as he was involved in criminal case demanding dowry. He was produced before the Additional Civil Judge and Judicial Magistrate, Jaipur on 28/12/2007 who remanded him to police custody for five days. During the police remand period, he was brought back to Mumbai in hand-cuffed position, as per Court's order dated 28/12/1997. Thereafter, he was remanded in jail custody for a period from 2/1/1998 to 5/1/1998. In terms of the provisions of Regulation 23 of the International Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 1987, Workman was placed under suspension w.e.f. 13/4/1998 by order dated 13/4/1998 issued to him. He did not appeal against the said order of suspension. His suspension was however revoked in terms of the provision of Regulation 23(5) of the Discipline Regulations, 1987, by an order dated 1/3/2002 as the criminal case filed against the workman by the State would not be disposed of in the near future and he was being paid a subsistence allowance @ 75% of the basic pay and allowances without doing any work; thereby caused monetary loss to the public exchequer. However, the said revocation of suspension was without prejudice to the rights and contentions of the management to take such disciplinary action and to treat the period of suspension, as may be warranting; based on the final outcome of the Court verdict on the case pending against him. Later on by judgment of conviction and order of sentence dated 25/11/2003 passed by Additional Session Judge No. 1 (Fast Track), Jaipur City, Jaipur in Sessions Case No. 128 of 2001, he was found guilty and punishment for three years imprisonment and a fine of Rs. 10,000/- was imposed upon him. In view of the said punishment imposed upon workman, the penalty of compulsory retirement from the services of the Authority with immediate effect was imposed upon him by the Airport Director of the Authority, vide order dated 8/7/2004 in terms of the provisions of Regulation 33(1) (i) of the Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003.

5. It is contended by the management, Second party workman filed an appeal in High Court of Rajasthan against the said order dated 25/11/2003 passed by Additional Sessions Judge No. 1 (fast Track), Jaipur City; which is still pending. The workman also preferred the appeal before the Authority by his letters dated 6/8/2004 and 6/6/2005 addressed to the Appellate Authority against the said order dated 8/7/2004 imposing the penalty of compulsory retirement from the services of the Authority upon him. The appeals dated 6/8/2004 and 6/6/2005 of the workman have been considered by the Appellate Authority; who is of the opinion that the High Court of Rajasthan by its order dated 2/6/2005 has only stayed the sentence during the pendency of the appeal and has not set aside the order of conviction; which will be decided at the time of final disposal of the appeal. Therefore, the provisions of the Conduct and Discipline Regulations of the Authority are applicable & the penalty imposed by the Disciplinary Authority was as per the existing norms and rules. Therefore, there was no need to interfere with the decision of the Disciplinary Authority at that stage. However, after a decision on the pending appeal in the High Court; the decision would be taken by the Authority in terms of the judgment passed in the appeal. The said decision of Appellate Authority was conveyed by its Head Quarters at New Delhi to the Airport Director, C.S.I. Airport, Mumbai by a letter dated 30/6/2006 which was in turn, communicated by the Authority to the workman by a letter dated 14/7/2006. Under the circumstances, the workman was not entitled to be reinstated in service by setting aside the order dated 8/7/2004 passed by Airport Director. So according to them, the contents of the Statement of Claim are false. The Reference is devoid of merits. The workman is not entitled to reinstatement in service and therefore prays that Reference be dismissed.

6. Following are the issues for my determinations. I record my findings there on for the reasons to follow:

Sr. No.	Issues	Findings
1.	Is second party workman entitled for reinstatement?	No.
2.	What order?	As per order below.

REASONS

Issue No. 1

7. Second party workman has not led any evidence. He remained absent since 8/12/2014. In the circumstances first party management has lead evidence of Smt. Sunita Tirkey, Manager (HR) by filing Affidavit Ex-12. Since workman remained absent, there is no cross-examination of the witness of the management and her evidence remained unshaken.

8. It is undisputed that second party workman was employed w.e.f. 16/8/1995 in the capacity of Draughtsman Grade II (Electrical) and said post has been re-designed as Senior Assistant (Drawing Electrical). Undisputedly second party workman was arrested by Jaipur police as he was involved in criminal case. He was produced before Additional Civil Judge and Judicial Magistrate, Jaipur on 28/12/2007 who remanded him to police custody for five days. Thereafter, he was remained in jail custody for a period from 2/1/1998 to 5/1/1998. Undisputedly therefore second party workman was put under suspension on the ground that he was involved in criminal offence which was under investigation and subsequently in that criminal case he was convicted by Additional District Judge Jaipur by order dated 25/11/2003 and he was sentenced to imprisonment for three years and a fine of Rs 10,000/-. It appears that second party workman has filed Appeal before High Court of Rajasthan against the said order of conviction and sentence passed by the Additional Sessions Judge No.1 (Fast Track), Jaipur City; and the High Court Rajasthan has stayed the said Judgment of conviction. Thus the question is whether in such circumstances second party workman is entitled to be reinstated in services.

9. As a matter of fact first party by its order dated 13/4/1998 placed the second party under suspension in terms of the provision of Regulation 23 of the International Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 1987. Subsequently the said suspension was revoked and he was allowed to report for his duty because the criminal case filed against him by the State would not be disposed of in the near future and he was being paid a subsistence allowance @ 75% of the basic pay and allowances without doing any work. But then the fact remains that subsequently he has been convicted in that criminal case by order of Additional Sessions Judge No.1 (fast Track) Jaipur City, Jaipur. After the order of conviction the penalty of compulsory retirement from the services was imposed on workman by Airport Director of the Authority, vide order dated 8/7/2004 in terms of Provisions of Regulation 33(1)(i) of the Airport Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003. This punishment of compulsory retirement was imposed on 8/7/2004 and thereafter as per the order of High Court of Rajasthan conviction and sentence passed was stayed on 2/6/2005. As such Hon'ble High Court Order was subsequent to the order dated 8/7/2004 passed by the Airports Director imposing penalty of compulsory retirement from the services on the workman.

10. That apart the question creeps is whether in view of the said order passed by the Hon'ble High Court Rajasthan, whereby the order of conviction passed by Additional Sessions Judge Jaipur is stayed, the second party workman is entitled for reinstatement.

11. It is made clear in Written Statement that after decision on the pending appeal in the High Court; the decision would be taken by the Authority; in terms of the judgment passed by the High Court in the said appeal. The dispute under Reference is whether the demand of workman for reinstatement of services of Airports Authority of India in view of stay given by the High Court of Rajasthan is justified and proper. The Reference does not refer to any demand of the workman for reinstatement, in case the order of conviction and sentence passed by Additional Sessions Judge No.1 (Fast Track) Jaipur, would be set aside by High Court in the said appeal. That apart in the Written Statement, it is stated by the management that decision would be taken in that respect after the decision of appeal in the High Court and in terms of the judgment passed by the High Court in appeal. At this stage it is to be seen whether, in view of the order passed by the Hon'ble High Court, the workman is entitled for reinstatement.

12. In the context hand can be led on the decision in **case of Radheshyam Agarwal V/s The State Of Madhya Pradesh Writ Petition No. 333/2011** wherein it is held that,

“Even if the conviction of sentence has been suspended, the disqualification attached to the conviction is not taken away and pendency of the appeal and suspension of sentence is not a ground for continuing the employee in service. In spite of this, the employer has a right to terminate the services and in this regard the law laid down by the Supreme Court in the case of Dy. Director of Collegiate Education V/s. S. Nagar, 1995 (3) SCC 377 may be taken note of.”

13. In view of this legal position the second party workman is not entitled to reinstatement; in view of the stay order passed by the Hon'ble High Court of Rajasthan vide application No. 1038 of 2004 filed by second party workman. Accordingly the Head quarters at New Delhi conveyed the decision of the Appellate Authority, vide its letter dated 30/6/2006, stating that appeals filed by the workman dated 6/8/2004 and 6/6/2005 have been considered by the Appellate Authority, who is of the opinion that the High Court of Rajasthan by its order dated 2/6/2005 has only stayed the sentence during the pendency of the appeal and has not set aside the order of conviction. In view of legal position

cited above suspension of sentence is not a ground to continue the employee in service. As such there is no question of reinstatement of second party workman on the ground that the Judgment of conviction is stayed. Hence, I hold that second party workman is not entitled for reinstatement in service. Above issues are answered accordingly as indicated against each of them.

14. In the result I pass the following Order:

ORDER

Reference is rejected with no order as to cost.

Date: 20.07.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1965.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कर्मचारी राज्य बीमा निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 09/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-17025/1/2016-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1965.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2016) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Employees State Insurance Corporation and their workman, which was received by the Central Government on 09.09.2016.

[No. L-17025/1/2016-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 09 of 2016

Between :

Naresh Pal Arora,
Son of Sri Desh Raj Arora,
D-29 ESIC Nikunj,
Sarvodaya Nagar,
Kanpur-208005.

And

Employees State Insurance Corporation,
Through its Regional Director,
Panchdeep Bhawan,
Kanpur and others.
208005.

AWARD

1. Worker Naresh Pal Arora has filed the present claim petition under section 2A(2) of Industrial Disputes Act, 1947, before this tribunal on the ground that the present claim petition is being filed directly as he was removed from service by imposing the punishment of compulsory retirement and his conciliation application filed on 18.11.13 is still pending though it is about three months now. It alleged that he joined the service of the opposite party on 29.01.80 and was removed by imposing punishment of compulsory retirement which matter is under contest separately. It is also

alleged by him that while in service the workman availed leave from 06.02.14 to 22.03.15 and the same had been granted vide office order no.26 of 2015 dated 15.5.15 but the payment of leave salary remained pending therefore the workman requested for early payment vide his letter dated 6.6.15 whereupon the granted leave has been revoked arbitrarily without any valid reason vide order no.31 of 2015 on the ground that the leave has been granted inadvertently without considering the pending charge sheet against the worker. It is therefore, prayed that the action of the department is arbitrary illegal and without any basis, the same may kindly be set aside and the opposite party may be directed to pay salary for the leave period from 06.02.14 to 22.3.15.

2. Worker has also filed certain documents with his claim petition.

3. Opposite party has filed objection and alleged that the so called dispute raised by the worker is not an industrial dispute under section 2A(1) of the Act as the same is not any way connected with or arising out of any discharge dismissal retrenchment or termination of the workman. Rather the cause of dispute is a leave revocation order dated 30.06.15 and nonpayment of salary. As such the present petition is not maintainable being devoid of merit hence is liable to be dismissed.

4. On 31.05.16, when the case was taken up for hearing the worker appeared in the case and moved an application that he wants to withdraw the above case for personal reason and requested to allow his application and also does not press this case.

5. Considering the prayer of the worker the tribunal has no option but to decide the case against the worker and he will not be entitled for any relief as claimed by him.

6. Award is passed accordingly against him.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1966.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डायमण्ड सीमेंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 107/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-29012/11/2014-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1966.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 107/2014) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Diamond Cement and their workman, which was received by the Central Government on 09.09.2016.

[No. L-29012/11/2014-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 107/2014

Sri Ajuddhi Patel alias Afodi Patel
S/o Late Babu Lal
C/o Sh. Suresh Modi, Underground Freedom Fighter
Baradwari,
Civil Wart No.3,
Damoh (MP)
470661

And

The Factory Manager
Diamond Cement,
Prop. Heidelberg Cement India Limited,
Mandaura,
Distt.
Jhansi(UP).

AWARD

1. Central Government, MoL, New Delhi, vide notification no.L-29012/11/2014-IR (M) dated 02.09.2014, has referred the following dispute for adjudication to this tribunal.
2. Whether the demand of Sh. Ajuddhi Patel alias Afodi S/o Late Babu Lal regarding engagement by the management of Diamond Cement Prop. Heidelberg Cement India Limited Jhansi and subsequently termination of the services w. e. f. February 2002 in violation of the provision of ID Act 1947, is just fair and legal? If not to what relief the workman concerned is entitled to?
3. Worker through post has filed his claim statement stating that in February 2006, Diamond Cement Factory, had retrenched 160 workers without any notice and with the help of police and miscreants workers were compelled to leave Jhansi by train and the worker Sri Ajuddhi alias Afodi Patel was one of them, who has contested through Freedom Fighter Cell and is filing photocopies available with him. He has further stated that he started working in the factory at Rs.8/- per day when he was 8 years old and worked in the packing department for 21 years.
4. It is pertinent to mention that this claim statement of the worker was submitted through Sri Suresh Modi, Freedom Fighter but Suresh Modi has not filed any authority on behalf of the worker.
5. Management has submitted its written statement denying the averments of the claim statement and has further stated that the claimant was never ever been the employee of the answering opposite party in any capacity and there never existed the relationship of master and servant between the employer and the worker. The claim of the worker is devoid of merit.
6. Worker has submitted photocopy of the documents and photocopy of his affidavit and affidavit of Sri Suresh Modi and has sent several letters to this tribunal through post for deciding the reference in his favor. He has also submitted written arguments without examining him as witness before this tribunal. He has further submitted photocopies of cuttings of News Papers which has no relevancy with merit of the present case. Photocopies submitted by the worker cannot be relied upon unless originals are produced in the court and proved by the worker.
7. The facts alleged in the claim statement that worker was working with the opposite party when he was only 8 years old and was getting Rs.8/- per day as wages cannot be believed as a young boy of only 8 years of age can never be in the employment of the employer.
8. From the above it is abundantly clear that the worker has failed to prove his case before this tribunal by adducing acceptable evidence in support of his claim. As such the claim of the worker is bound to be answered against him in the absence of evidence and proof.
9. Reference is answered against the worker holding that he is not entitled for any relief as claimed by him pursuant to the present reference order.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1967.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बजाज आलियांज लाइफ इंश्योरेंस कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 30/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-17012/10/2011-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1967.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2011) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s. Bajaj Allianz Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 09.09.2016.

[No. L-17012/10/2011-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 30 of 2011

Between :

Sri Pawan Kumar Jain,
Son of Late Sri Trilok Chand Jain,
41/1 Gusainpura, Jhansi.

And

The Divisional Manager,
Bajaj Allianz Life Insurance Co. Ltd.,
Jhansi.

AWARD

1. Central Government, MoL, New Delhi, vide notification no. L-17012/10/2011/IR(M) dated 11.05.11, has referred the following dispute for adjudication to this tribunal-
2. Whether the action of the management of Bajaj Allianz Life Insurance Com. Ltd., Jhansi in terminating the services of Sri Pawan Kumar Jain son of Late Sri Tilok Chand Jain with effect from 01.05.2010 is just fair and legal? To what relief the workman concerned is entitled?
3. In short the case of the worker is that he was appointed at the post of Assistant Sales Manager vide appointment order dated 15.05.09 under the establishment of the opposite party at basic pay of Rs.6000/- per month. It was also mentioned in the appointment order that Rs.1250/- per month will be paid as medical allowance. The probationary period of the worker was one year which was completed by the worker four months left to one year still the opposite party did not regularized the services of the worker. It is also the case of the worker that he was never given any kind of training relating to his job, however he was completing the target of work allotted to him by the company. When the worker raised his voice and demanded the medical claim, the officers of the opposite party became annoyed against him and orally terminated his services with effect from 01.05.2010, without there being any charge sheet or inquiry, without making payment of notice, notice pay or retrenchment compensation as provided under section 25F of industrial Disputes Act, 1947, therefore, the oral termination of the services of the worker is violative of section 25F of the Act ignoring the hard fact that the worker had completed more than 24days of continuous service preceding 12 calendar months from the date of his termination as such it is liable to be set aside. Worker is also entitled for his reinstatement with full back wages, seniority and with all consequential benefits.
4. It is also pleaded by the worker that as per condition no. 8 (a) of appointment order, which is under the heading of termination (during probation) which, inter-alia, provides that during the period on probation as Assistant Sales Manager, either party can terminate this engagement without assigning any reason or giving one weeks' notice in writing or on paying to the other an amount equivalent to 1 week's basic salary in lieu of notice.
5. It is also pleaded by the worker that neither the opposite party gave any notice as provided under clause 8(a) of the appointment letter not paid basic salary of one week in lieu of notice, therefore, the action of the opposite party is also against the terms and conditions of the appointment letter hence is liable to be set aside.
6. At any rate the worker is entitled for his reinstatement with full back wages, continuity of service, with all consequential benefits.
7. Management after service did not file any written statement in the case or any documents nor anyone appeared in the tribunal from the side of the management for cross examining the worker w.w.1 and all the opportunities of the management were closed.
8. Thereafter management moved application 14/1 along with affidavit 14/2-5 on 3.6.15 for recalling the order dated 20.02.12, 04.07.2013 and 27.08.13. After moving the application none appeared for management to pres this application for several dates and therefore by order dated 28.12.15 it was rejected in default by the management.

9. Worker has adduced his evidence as w.w.1 and he was not cross examined by the management, hence his evidence remains uncontroverted and thus is acceptable.
10. Management did not adduce any evidence. Worker has also filed documents in support of his claim, which will be discussed at the appropriate stage.
11. Worker w.w.1 in his evidence has stated that with the help of appointment letter dated 15.05.09 he joined the post of Assistant Sales Manager. Although it was intended by the opposite party in the appointment order that he will be paid Rs.16000/- as salary but he was never paid this much amount as salary rather he was never paid more than Rs.6000/- per month. With regard to the nature of job done by the worker he has stated that they are shown in paper no. Annexure III(1) to III(XV). He has also stated that he always done clerical work and had never performed administrative or managerial work under the opposite party. He further stated that he never sanctioned any leave of any employee of the company nor ever awarded punishment to any employee of the company nor ever issued any appointment letter.
12. Considering the own pleading of the worker that he was appointed at the post of Assistant Manager Sales by the opposite party it has become essential to first examine the issue whether the worker as per his own statement and evidence is a workman as defined under section 2(s) of Industrial Disputes Act, 1947.
13. On perusal of copy of appointment letter 9/6-15 filed by the applicant and evidence adduced by applicant on affidavit it appears that applicant has no administrative powers or powers to act through which company is bound by his act. Although the worker was selected and designated as Assistant Sales Manager, but in his evidence he has categorically stated that he never discharges managerial function at any point of time being designated as Assistant Sales Manager.
14. It is settled legal position of law that glorified designation of a post is not a decisive factor to examine whether post belongs to the category of workman or officer. What matters is the responsibility and nature of duties performed by a person having glorified designation of a post in any establishment to decide whether it attracts the definition of section 2-(s) of the Act, if answer is in affirmative then glorified designation becomes redundant and person will be deemed to be a workman within section 2(s) of the Act and his case is amenable under Industrial Disputes Act, 1947.
15. Therefore, considering the uncontroverted evidence of the worker and documents filed by him it is held that by nature of work performed by the worker, it is held that Sri Pawan Kumar Jain is a workman as defined under section 2(s) of the Act, as such reference order is maintainable in the eye of law before this tribunal.
16. From the records of the case it is also very much clear that the services of the worker were dispensed with by oral order without assigning any reason or without complying with the condition no. 8(a) of the appointment order or even otherwise the action of the management as referred to in reference order cannot be upheld because it has been done in breach of section 25F of the Act.
17. Therefore, at any rate the action of the management of Bajaj Allianz Insurance Company Ltd. Jhansi in terminating the services of Sri Pawan Kumar Jain son of late Sri Tilok Chand Jain w.e.f. 1.5.2000 is neither just nor legal? He is therefore held entitled for his reinstatement with full back wages, continuity of service and all consequential benefits.
18. Reference is therefore answered in favor of the worker and against the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1968.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स चैन्नई पेट्रोलियम कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 69/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-30011/1/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1968.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Chennai Petroleum Corporation Ltd. and other and their workman, which was received by the Central Government on 09.09.2016.

[No. L-30011/1/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**Friday, the 12th August, 2016**Present : K.P. PRASANNA KUMARI**, Presiding Officer**Industrial Dispute No. 69/2015**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Doshion Veolia Desalination Water Solutions Pvt. Ltd., Chennai and their workman)

BETWEEN :

The Tamil Nadu Petroleum & Gas Workers Union : 1st Party/Petitioner Union
27, Mosque Street, Chennai-600005

AND

1. The General Manager (HR) : 2nd Party/1st Respondent
Chennai Petroleum Corporation Ltd.
Desalination Plant, Manali
Chennai-600068
2. M/s Doshion Veolia Desalination Water
Solutions Pvt. Ltd.
7th Floor, KRD Jee Complex
Dr. Radhakrishnan Salai
Chennai-600004

Appearance :

For the 1st Party/Petitioner Union : Sri V. Ajoy Khose, Advocate
For the 2nd Party/1st Respondent : Sri S. Ramasubramaniam & Associates, Advocates
For the 2nd Party/2nd Respondent : Sri K. Kalimuthu, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-30011/1/2015 (IR(M) dated 15.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of M/s Doshion Veolia Desalination Water Solutions Pvt. Ltd. in denying one month wages as bonus to the workmen is justifiable or not? If not, to what relief the workmen are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 69/2015 and issued notices to both sides. Both sides have entered appearance through their Counsel and filed Claim and Counter Statement respectively.
3. The petitioner has filed a memo to the effect that a settlement was entered into between the parties and the Management has paid the amount due to the workers on 01.08.2016.
4. As could be seen from the memo produced on behalf of the petitioner their grievance is settled out of the Court. The petitioner does not require any relief through this forum

Therefore, the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the PA transcribed and typed by him, corrected and pronounced by me in the open court on this the 12th August, 2016)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : None
For the 2nd Party/1st Management : None
For the 2nd Party/2nd Management : None

Documents Marked :**On the petitioner's side**

Ex.No.	Date	Description
	Nil	

On the Management's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1969.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 25/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-17012/35/2011-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1969.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2012) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 09.09.2016.

[No. L-17012/35/2011-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 25 of 12

Sri Dalveer Singh,
Son of Sri Maharaj Singh,
Resident of village Bana,
Post Raya,
District Mathura.

And

The Senior Divisional Manager,
LIC of India,
543, Laxmi Bhawan,
Ramghat Road, Aligarh.

AWARD

1. Central Government, MoL, New Delhi, vide notification no.L-17012/35/2011-IR(M) dated 06.03.12, has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management of LIC of India, Aligarh in terminating the service of Sri Dalveer Singh son of Sri Maharaj Singh with effect from 22.1.11 is legal and justified? What relief the workman is entitled to?
3. The case of the worker in short is that he was appointed by the then branch manager of Life Insurance Corporation of India at branch office – 2 Junction Road Mathura at the post of peon on 22.04.99 and worked there till 22.01.11 and he was paid Rs.1958/- per month as wages. With a view to deprive the worker for claiming regular employment the management used to pay him salary in different names whereas hard fact remains that the worker

himself had worked. This practice on the part of the management amounts to unfair labor practice as defined under section 2 (ra) of the Act. Coming to know the fact that appointment process to appoint regular peon, the then branch manager to earn money by getting appointed some new hand, he removed him from the service with effect from 23.01.11 by saying that now there is no need of his services. He requested the branch manager not to terminate his services and allow him to remain in the employment and when nothing fruitful came in the matter he gave a legal notice to the management on 13.06.11. Worker remained in continuous employment of the opposite party during the period 22.4.99 to 22.01.11.

4. The worker therefore, has prayed that the action of the opposite party be held to be bad in law and he be allowed his reinstatement in the service with full back wages continuity of service and all consequential benefits.

5. The management has filed written statement in which it is alleged that the opposite party is a public sector organization and it has to work according to the guidelines issued by Government of India from time to time. There are set rules of recruitment and the worker had never been subjected to such rules in the matter of his appointment, therefore, the worker is not entitled for regular employment in the opposite party. It is also alleged that the worker by means of this reference is trying to seek back door entry in the public employment; therefore, his claim is liable to be dismissed. It is denied that the worker had ever completed 240 days of continuous service under the management as such he is not entitled for any benefit.

6. On merit of the case it is alleged that in summer season there arises need of a waterman in the branch as such the applicant was engaged by the branch manager as casual waterman with effect from 22.04.99 and worked till 31.07.99 and was paid his wages by the branch manager at the rate of Rs.1630/- per month. After the end of summer season his services automatically came to an end and the worker did not work thereafter. The worker fraudulently obtained the work of peon in branch office No.2 vide letter dated 13.3.07 issued by the Divisional Office Aligarh for a fixed period of 85 days during the period 17.03.07 to 09.06.07 as such in view of the provisions of section 2(o)(bb), his disengagement is not a retrenchment as such the worker is not entitled for any benefit. It was clearly mentioned in the fixed term appointment letter that engagement for 85 days will not confer upon him any right to claim regular employment in LIC and the worker accepted the terms of his appointment and joined on 17.03.07 at branch office -2 Mathura as such he is not entitled to claim any relief on the basis of aforesaid engagement. The brother of the worker Sri Megh Shyam is working as Assistant at the branch office on regular and permanent basis and whenever any casual work arises at the branch, on the request of Sri Megh Singh the services of the worker were utilized at the branch. The worker had never completed 240 days in any of the year. The claim of the worker is misconceived; baseless and based on untrue facts hence is denied. The management has denied that the services of the worker had ever been terminated at any point of time what to say on 23.01.11.

7. On the basis of above it has been prayed that the claim of the worker is devoid of merit and is liable to be rejected.

8. The worker with his claim petition has filed papers 3/1-113 which are in the shape of photocopies.

9. In the rejoinder filed by the worker nothing new has been pleaded therein.

10. Worker has also summoned certain documents from the management vide application supported by affidavit dated 10.05.13 and the management filed the summoned documents as is clear by order dated 09.10.13.

11. The worker examined himself as w.w.1 whereas the management examined Sri I.P. Singh as M.W.1.

12. Tribunal has heard the arguments of the contesting parties at length and has also perused the record of the case carefully.

13. A short question which is involved in the case is as to whether worker had worked continuously for 240 days preceding 12 calendar months from the date of alleged termination i.e. 22.01.11.

14. In the claim statement worker has alleged that he had been appointed by the branch manager LIC Mathura on the post of peon on 22.4.99. His monthly salary was fixed at Rs.1958/- per month and he had continuously worked for 12 calendar years up to 22.1.11 and he was being paid wages in others name with a motive that he may not claim any regularization. Worker has also filed his affidavit in evidence stating same facts that he was appointed at the post of peon on 22.4.99 and worked continuously for 12 year up to 22.1.11 on monthly wages of Rs.1958. He was being paid his wages in the name of others. He has filed the payment vouchers to prove it.

15. In the cross-examination he has denied that he had worked as casual labor in summer season from 22.4.99 to 31.7.99. He has also denied that he had not worked from 31.7.99 to 17.3.07. He has further deposed that his name was set through employment exchange and he was appointed after taking interview but no appointment letter was given to him. He has not made any complaint in receiving payment in the name of others. His brother Megh Shyam was also permanent employee of LIC. He has denied the fact that the management has taken his service for misc work on the recommendation of his brother. He has denied that he has not worked continuously for 240 days. He has admitted that he

has not filed any proof of payment from 09.06.07 to 22.1.11. He has further admitted that he has recovered the payment for the period he worked and no payment is due on the management.

16. Management in its written statement has alleged that appointment on any post is done according to guide lines issued by Government of India. It is further alleged that in summer season there arises need of waterman in the branch and the worker was engaged by the then branch manager as waterman w.e.f. 22.4.99 and worked till 31.7.99 and was paid his wages at the rate of Rs.1630/- per month. The worker fraudulently obtained the work of peon via letter dated 13.3.07 issued by the Divisional Office for a fixed period of 89 days from 17.3.07 to 09.06.07.

17. In support of its contention management examined M.W.1 Sri I P Singh, branch manager who has stated on oath that worker Dalveer Singh was never appointed according to prescribed procedure and no appointment letter was issued to him. He was engaged from 22.4.99 to 31.7.99 and 17.3.07 to 09.06.07 as casual waterman and no other work was taken from him and denied that payment was done in the name of others. He further deposed that Raj Kumar and others were appointed in compliance of direction of Hon'ble Apex Court and papers regarding their appointment are filed which are paper no.15/2-16.

18. In his cross-examination he stated that no letter was issued to worker for his appointment for fixed period from 22.4.99 to 31.7.99. He has further stated that paper No.3/39 was not issued by the department and paper No.3/87 and 3/96 are forged.

19. From the above discussions, it appears that worker is claiming his regular appointment at the post of peon while management denying it alleging that worker was only engaged as casual waterman for a fixed period and was never appointed against any regular vacancy.

20. On perusal of paper No.17/2-3 and paper No.17/4 filed by the management it is clear that worker was appointed on the post of peon for a fixed period of 85 days. It cannot confer any right to worker for claiming regular appointment.

21. Besides this worker has filed several documents like photocopies of payment vouchers and papers showing other misc work taken by worker which are paper No.3/5-97 but on perusal of these papers it is apparent that papers regarding receiving of wages are not filed and all these papers relates to the payment for misc. work done by hm.

22. Paper No.3/101 is reply of management given on the legal notice of worker 3/100 wherein it was informed that worker was only appointed for a fixed period of 85 days as peon and he is wrongly claiming for his regular appointment. It is also pertinent to mention that the brother of the worker admittedly working in the branch on the post of clerk and misc. work and other work of waterman appears to have been given to worker on the recommendation of his brother.

23. Lastly worker has failed to prove that he continuously worked for 240 days preceding 12 calendar months from the date of alleged termination.

24. For the reasons given above it is held that the action of the management of LIC of India in terminating the service of the worker with effect from 22.1.11 is legal and justified and the worker is not entitled to any relief.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1970.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैहर स्टोन एण्ड लाइम कं. प्रा. लि./एन.एम. दुबाश स्टोन एण्ड लाइम स्टोन कं. प्रा. लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 51/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-29012/5/2014-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1970.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2014) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Maihar Stone & Lime Co. Pvt. Ltd./N.M. Dubash Stone & Lime Co. Pvt. Ltd. and their workman, which was received by the Central Government on 09.09.2016.

[No. L-29012/5/2014-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/51/2014**

Shri Shiv Poojan Singh
S/o Shri Bake Bahadur Singh,
R/o Ward No.13, Vivek Nagar,
Rewa Road, Maihar Distt.
Satna (MP)

... Workman

Versus

Mine Owner,
Maihar Stone & Lime Co.Pvt.Ltd.,
Through Mr, Shailendra Ora,
Station Road, Maihar Distt.
Satna (MP)

The Mine Owner
N.M. Dubash Stone & Lime Co.Pvt. Ltd.,
Through Mr. Shailendra Ora,
Station Road, Maihar Distt.
Satna (MP)

... Management

AWARDPassed on this 22nd day of July, 2016

1. As per letter dated 5-6-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29012/5/2014-IR(M). The dispute under reference relates to:

“Whether the action of the management of Mine Owner (Through Shri Shailendra Ora) N.M.Dubash Stone & Lime Company/ Maihar Stone & Lime company Ltd., Satna in terminating the services of Shri Shiv Poojan Singh S/o Shri Bake Bahadur Singh w.e.f. 31-12-12 is legal and justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party instead of appearing in reference proceeding, sent application supported by affidavit that workman has failed to participate in reference proceeding.

3. 2nd party management appeared through Advocate Shankar Singh and filed application for dismissal of reference instead of filing ex parte Written Statement. Both the parties have contented that Ist party workman is not prosecuting his claim under reference. As per the application submitted by 2nd party, Ist party workman has been superannuated, he was not terminated from service. That the matter was fixed for verification of contentions of management. Parties have not appeared. Considering the copies of application by workman started by affidavit and applications submitted by 2nd party management, it is clear that no dispute exists between parties. Therefore No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 सितम्बर, 2016

का.आ. 1971.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई इस्पात संयंत्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 11/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-26011/2/2007-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 14th September, 2016

S.O. 1971.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2008) of the Central Government Industrial Tribunal/Labour

Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and their workman, which was received by the Central Government on 09.09.2016.

[No. L-26011/2/2007-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/11/2008

The President,
Metal Mines Workers Union,
Dallirajhara,
Durg (CG)

...Workman/Union

Versus

General Manager(Mines),
Bhilai Steel Plant,
Bhilai Durg (CG)

...Management

AWARD

Passed on this 21st day of July, 2016

1. As per letter dated 7-2-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-26011/2/2007-IR(M). The dispute under reference relates to:

“Whether demand of Metal Mines Workers Union (INTUC), Dallirajhara, Distt. Durg (CG) for regularization/promotion of S/Shri Ashvini Kumar, S.R.Churendra, S.K.Baghel, Tukaram Rangari, N.K.Dutta, A.K.Dutta, Bala Ram Mankar, K.K.Nuruti to the post of Shovel Operator/Sr.Operator (Excavation), Grade S-6 is legal and justified? If so, to what relief these workers are entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party Union has submitted statement of claim. Case of Ist party Union is that workers pertaining to the dispute S/Shri Ashvini Kumar, S.R.Churendra, S.K.Baghel, Tukaram Rangari, N.K.Dutta, A.K.Dutta, Bala Ram Mankar, K.K.Nuruti were engaged for operating excavation in Dali Mech.Mines. those workers are presently working in different grades shown in the list. Those 8 workers were regular members of the Union, they were honestly working with the management to the satisfaction of their seniors. They are covered as workman under Section 2(s) of ID Act. Those workers have been appointed on vacant post following procedure procedure. That in Dali Mech Mines, about 23 workers are working for operating excavators. Management engaged them from different grades. Out of 23 workers, 15 workers are working in Grade S-6 and remaining 8 workers are working as Grade S-6 but were being paid salary of Grade S-3. That despite of their satisfactory work, they are not regularized on Grade S-6 post neither they are promoted in said grade, those workers are working for considerable long time shows that there was regular need of the skilled workers in the department. Action of the management not paying same salary paid to the regular incumbents in violative of Article 39 of the constitution. That as per Company's rules, Shovel has to be operated by the Sr.Operators of S-6 and above grade. That all those 8 workers operating shovel but they are paid emolument of S-3 post, action of management is illegal for violation of equal pay for equal work. During conciliation proceeding, management had suggested that Union should accept the offer of 20 % more in the present motivation package for operators involved in the present dispute. That those workers have acquired experience, they are fully qualified to work on post of Grade S-6 by virtue for their continuity and experience in the service. They claim regularization/ promotion from S-3 to S-6 with retrospective effect.

3. 2nd party filed Written Statement opposing claim of Ist party. 2nd party submits that 8 workers related to the dispute under reference were not appointed for exclusive operation of Excavator, 7 of them were appointed as Attendants in Cluster A and subsequently selected and upgraded to the higher post of Operative cum Technician in Cluster B. Shri Ashwani Kumar was initially appointed as OCT. Workmen are required to take care of related jobs and also acquire knowledge of shovel operation. It is contented that as per Company's rule, an employee is promoted to higher post of Senior Operator in S-6 grade in Cluster C only on completion of a minimum period of 3 years of service in S-5 grade in cluster B on passing trade test for the higher post and on availability of vacancies. Disputed workers are in S-4 grade. They have not reached S-5 grade yet in their existing cluster. Therefore demand of direct promotion

to the post of Senior Operator in S-6 grade which is two grades higher is totally unjustified and in violation of the company's promotion policy.

4. 2nd party further submits that OCT is a job of skilled nature, Sr. Operator (Excavation) is a job of higher skilled category. An OCT is considered for promotion to the post of Senior Operator (Excavator) on completion of 3 years of service in S-5 grade and only on passing the trade test. The operation of shovel is a part of the job of OCT as a skilled workman. That several punishments were imposed against Ashwani Kumar- suspension without wages for two days vide order dated 13-1-03, (ii) censured on 13-1-03 for the misconduct of remaining absent from duties without prior permission of sanction of leave for 12 days, (iii) suspension without wages for a period of four days w.e.f. 6-5-03 for misconduct of remaining absent from duties without prior permission, (iv) reduction of pay by one stage for a period of two years with cumulative effect w.e.f. 1-2-05, (v) reduction to the minimum basic pay of the pay scale of S-4 grade for a period of 3 years, (vi) reduction to the minimum basic pay of the ipay scale of S3 grade for a period of one year without cumulative effect w.e.f. 1-6-06, (vii) Reduction to the minimum basic pay fo pay scale of S3 Grade for a period of 3 years without cumulative effect w.e.f. 1-12-06, (viii) reduction to the minimum basic pay fo the pay scale of S3 grade for a period of 4 years, (ix) reduction to the minimum basic pay of the pay scale of S3 grade for a period of one year. Shri B.R.Churendra was imposed (i) warning letter issued on 20-12-04 for stoppage of work and causing loss of production, (ii) censured on 18-6-06 for misconduct of remaining absent from duties without prior permission, (iii) charge sheet issued on 16-8-2010 for misconduct of remaining absent from duties without prior permission or sanction of leave. Shri A.K.Dutta was censured on 11-8-08 for the misconduct of Fraud and dishonesty with the company's business and property. Above contentions are reiterated that the disputed workers were not eligible for promotion as per rules and policy of the company. The disputed claimants are granted amount of Rs.250 per month as per agreement read with recognized Union dated 25-8-05. Disputant claimants are not entitled for regularization or promotion to the post of Grade S-6. They are paid extra amount Rs. 250 per month for operation shovel in addition to their emoluments. Only after completion of 3 years service in S-3 grade, claimants would be absorbed or re-designated in S-6 grade. On such ground, 2nd party submits that reference be answered in its favour.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether demand of Metal Mines Workers Union (INTUC), Dallirajhara, Distt. Durg (CG) for regularization/ promotion of S/Shri Ashvini Kumar, S.R.Churendra, S.K.Baghel, Tukaram Rangari, N.K.Dutta, A.K.Dutta, Bala Ram Mankar, K.K.Nuruti to the post of Shovel Operator/Sr.Operator (Excavation), Grade S-6 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

6. The term of reference pertains to demand of Union for regularization/ promotion of 8 claimants workers mentioned in the order of reference to S-6 Grade Post. Ist party Union failed to adduced evidence in support of his claim. Evidence of Ist party is closed on 3-6-2014.

7. Management filed affidavit of witness Shri Rohit Kumar supporting contentions of 2nd party in Written Statement. Affidavit of management's witness clearly speaks that as per company's policy, an employee is promoted/ upgraded to the higher post of Senior Operator in S-6 Grade in Cluster C only on completion of a minimum period of 3 years of service in S-5 grade, in cluster B on passing the trade test for higher post and on availability of vacancies. The demand for direct promotion to the post of Sr. Operator S-6 grade is unjustified. That OCT is job of skilled nature, senior operator is job of higher skilled category. An OCT is considered for promotion to the post of Senior Operator (Excavator) on completion of 3 years service in S-5 grade and only on passing the trade test. The operation of shovel is part of the job of OCT as a skilled workman. An OCT is required to qualify the trade test for the post of Senior Operator Excavator and then will be considered for promotion to their higher post of Sr. Operator (Excavator) only through practical experience of operating a shovel. Affidavit of management's witness is further devoted about various punishment imposed against Shri Ashwini Kumar, B.R.Churendra and Shri A.K.Dutta. That disputant claimants are exposed to shovel operational jobs they are being granted an amount of Rs.250/- per month in accordance with the agreement reached with the Union on 25-8-05. From evidence of management's witness documents M-1 to M-5 are admitted in evidence. In his cross-examination, management's witness admit that 23 employees are doing work of Sr.

Shovel Operator. Out of it, 15 are of S-6 Grade, 8 are of S-3 Grade. He denies that employees of S-3 & S-6 Grade are doing similar work. Employees of S-6 Grade are doing highly skilled work. He denies that all the employees were doing job of operator excavator since their initial appointment. Management's witness denies that 8 claimants in S-3 Grade- work of S-6 grade is extracted from them. Management's witness was unable to tell about vacant post of S-6 Grade from 25-8-05. Management's witness admits that documents M-3 to M-15 received by claimants disputant are not produced.

8. Exhibit M-1, 1-A to G are appointment orders of claimants dated 30-12-96, 27-6-96, 6-2-96, 7-8-95, 1-10-93, Exhibit M-2 is order dated 11-10-05 claimant and others were engaged in Shovel Operations allowing to draw Rs.250 per month from 1-8-05. M-3 is order of punishment against Ashwini Kumar. Exhibit M-4 to 13 are the order of punishment imposed against disputants/claimants. Exhibit M-14 is memorandum issued to Barata Ram Churendra. Similar set of documents are also produced on record. As evidence of Ist party w.r.t. promotion to the post of Grade S-6, 3 years working in S-5 Grade and passing trade test is not shattered. Therefore demand of Union is not legal. For above reasons, I record my finding in Point No.1 in Negative.

9. In the result, award is passed as under:-

- (1) The demand of Union is not legal and proper.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1972.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 27/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.09.2016 को प्राप्त हुआ था।

[सं. एल-12011/106/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1972.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 15.09.2016.

[No. L-12011/106/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 27 of 2007

The General Secretary,
Bank of Baroda Staff Association,
Madhav Bhawan,
15/222A Civil Lines, Kanpur.

And

The Assistant General Manager,
Bank of Baroda,
Agra Region,
13 M.G.Road,
Agra.

AWARD

1. Central Government, MoL, New Delhi, vide notification no. L-12011/106/2006-IR(B-II) dated 01.05.07, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of Bank of Baroda in imposing the punishment of reduction of three stages in the time scale of pay with cumulative effect on Mr. Badam Singh vide order dated 30.10.04 and dismissing the appeal vide order dated 14.04.05 are just fair and proper? If not to what relief the workman concerned is entitled to?
3. Worker's case in short is that bank issued an illegal and arbitrary charge sheet dated 16.01.04 followed by corrigendum dated 3.2.04. Enquiry officer was appointed to inquire into the charges. Enquiry was conducted in utter violation of principles of natural justice and the inquiry officer failed to consider the issues raised by the worker and the witness of the worker were not allowed by the inquiry officer nor was any reason recorded by the inquiry officer in not allowing the defense witnesses. Worker has raised certain preliminary issue at the start of the inquiry but the same has not been considered by the enquiry officer. Interested witnesses were examined in the inquiry by the enquiry officer. Finding of the enquiry officer is perverse as it is not based upon material evidence available on record. The reply of the worker against the inquiry report has not been considered by the enquiry officer in right perspective. The punishment awarded to the worker has not been enumerated in the disciplinary rules of the bank and the punishment order passed by the disciplinary authority is totally non application of mind and without jurisdiction. Accordingly it is prayed that the punishment awarded to him be set aside.
4. The opposite party filed its written statement stating therein that the worker had been charged on four counts i.e.
 1. You did acts of riotous and indecent behavior in the premises of the bank;
 2. You disobeyed the lawful and reasonable order of your superior;
 3. You did acts prejudicial to the interest of the bank and
 - 4 you did acts of effecting the customers service and tarnishing the image of the bank..The worker on 2.4.13 while working at SB counter as computer operator ad left the counter at about 10.10 a.m. and approached joint manager and asked for his job rotation immediately upon which the manager advised him to attend the customers who were waiting at the counter. He did not follow the advice of the Manager, thereafter the matter was taken up with the Sr. Branch Manager who advised the worker to go immediately at the seat to attend the customers and the worker was further advised that any discussion over the matter is required will be discussed later on but the worker did not pay any heed to the instructions of the branch manager and started thumping with fist the table of the branch manager forcely and uttered following in loud and violent manner that "NAHI BAITHOONGA NAHI BAITHOONGA NAHI BAITHOONGA TUM MERA KYA KAR LOGE", therefore, charge sheet dated 16.1.04 followed by corrigendum dated 3.2.04 was issued to the worker leveling the above charges against the worker. On the basis of charges inquiry was conducted against the worker and the disciplinary authority concurred with the findings of the enquiry officer and after issuing show cause notice to the worker passed final order. Appeal preferred by the worker did not find favor. The witnesses named by the worker were not the relevant witness and therefore, the inquiry officer rejected the request of the worker to summon witnesses which is according to the principles of natural justice and no injustice has been done in the matter. The inquiry has been conducted in fair and proper manner and in accordance with the principles of natural justice. The disciplinary authority has full jurisdiction to impose punishment upon the worker and the punishment awarded to the worker fully commensurate with the proved misconduct accordingly the claim of the worker is liable to be rejected being devoid of merit.
5. Worker has filed rejoinder but nothing new has been narrated therein.
6. Along with the claim statement worker has filed 9 documents which are in the nature of photocopies.
7. Management has filed entire enquiry proceedings file in original.
8. During the domestic inquiry Management examined three witnesses whereas worker has also examined three witnesses in support of his case.
9. My predecessor has framed a preliminary issue regarding fairness of inquiry on 5.11.08 and fixed a date for hearing on the issue. As both the parties agreed not to lead any evidence on preliminary issue, therefore the case was heard on merit.
10. A.R. for the management has moved an application paper no. B.1 requesting to decide the issue along with merit of the case on the ground that the punishment awarded to the worker is reduction of three stages in the time scale of pay with cumulative effect. Worker did not appear for the last several years. I have heard arguments of A.R. of the management and perused the records.
11. The court has to consider whether enquiry conducted against the worker was in accordance with the principal of natural justice.
12. On perusal of domestic enquiry file, it appears that worker was charge on four counts amounting to indecent behavior in the premises of bank and this obedience of lawful and reasonable orders of his superior, acts prejudicial to the interest of bank effecting customer service and issued show cause notice to the worker, paper no. 8/5 which was replied by the worker paper no. 8/86, wherein he has stated that he requested branch manager for change of his duty from computer operator and the branch manager assured him to change his duty w.e.f. 1st April. On 2nd April 2003 he again requested for job rotation to joint manager than he took him I the chamber of senior branch manager.

The manager again assured him and asked him to his duty and the worker while returning to his seat, branch manager felt that the worker is coming to his side. He has not committed any deliberate mistake and if any mistake is committed by him, he may be excused and he will not give any chance of complaint in future.

13. Therefore from his explanation it is proved that on 02.04.2003 he was in the chamber of senior branch manager and gave his submission stating therein, in case he had committed any mistake, he may be excused. Therefore from his explanation it is proved that the worker on 2.4.03 was present in the chamber of Sr Branch Manager. It appears that worker had half heartedly accepted the charge in his written submission feeling sorry to what had happened in the chamber of the senior branch manager.

14. Management has examined three witnesses in the inquiry who were thoroughly cross examined by the authorised representative for the worker and thereafter worker has also examined three witnesses in the inquiry in support of his contention. During the course of inquiry the enquiry officer has rightly refused to summon the called for witnesses by the worker as their evidence was not considered to be relevant having regard to the allegations leveled against the worker. By a bare perusal of the inquiry finding recorded by the enquiry officer, the tribunal finds that the inquiry was conducted by the enquiry officer in a fair and proper manner inasmuch as the enquiry officer afforded full opportunity to the worker in his defense.

15. The tribunal has also gone through the findings of the enquiry officer and find that the enquiry officer has dealt with the evidence in a very rational manner and found charges to be proved against the worker. Thereafter show cause noticed was issued to the worker by the disciplinary authority and after considering the reply of the worker the disciplinary authority passed his final order finding that all the charges are proved by the enquiring authority imposed the punishment upon the worker as referred to in the reference order and he also ordered for with drawl of computer operator allowance. He also gave his concurrent findings and agreed with the finding of the enquiry officer, thereafter worker has preferred an appeal which was rejected by the appellate authority.. Therefore, it is held that the inquiry was conducted by giving every and reasonable opportunity to the worker at every stage which is held to be in accordance with rules of natural justice and there does not appear any perversity or infirmity in the conduct of inquiry by the enquiry officer or in the final order read with appellate order passed by the appellate authority. The worker was working in the bank as computer operator in the bank and in the inquiry senior officers like senior branch manager and joint manager has stated that worker has started thumping with fist the table of the branch manager and uttered in loud and violent manner and refused to back on his seat and thereafter other members of the branch by consoling the worker took outside the chamber of the manager thereafter worker started his work. While in his defense worker himself has admitted that he went to the chamber of the branch manager along with joint manager meanwhile some body called the joint manager and when the manager asked him to go on his seat and he went outside through the door,

16. It is pertinent to mention here that branch manager and other senior officer of the branch were not having any grudge against the worker therefore there does not appear any reason as to why the evidence of these senior officer should not be believed.

17. Lastly it is held that inquiry against the worker was conducted in a fair and proper manner by the enquiry officer and there does not appear any infirmity in the findings of the enquiry officer which is held to be just and fair and also that it is not a case of dismissal from service, therefore, tribunal lacks jurisdiction to interfere with the punishment awarded to the worker under the provisions of section 11-A of Industrial Disputes Act, 1947. As such the worker has rightly been awarded punishment on proved misconduct by the disciplinary authority and the appellate authority has rightly rejected the appeal of the worker finding no merit therein.

18. Accordingly the worker cannot be held entitled for any relief as prayed by him.

19. Reference is therefore, decided against the worker / union and in favor of the bank.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1973.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 01/11) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/75/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1973.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/11) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 15.09.2016.

[No. L-12012/75/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 01 of 11

Between :

Sri Santosh Kumar Gupta,
Son of M. P. Gupta,
B-28/63, A-1, A-2, Ghosari Tola,
Durga Kund,
Varanasi, U. P.

And

The Assistant General Manager,
Punjab National Bank,
Circle Office,
S-20/56D.
The Mall, Cantt,
Varanasi, U. P.
221002

AWARD

1. Central Government, MoL, New Delhi, vide notification no.L-12012/75/2010-IR (B-II) dated 20/30.12.2010 has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management of Punjab National Bank Varanasi in awarding punishment of compulsory retirement from service to Sri Santosh Kumar Gupta, Special Assistant Bhadohi Branch with effect from 30.12.09 is justified? What relief the workman is entitled to?
3. The case of the worker in short is that he was appointed on the post of clerk and considering his performance he was assigned the duties of greater risk and was posted as special assistant on permanent basis at Branch Office Bhadohi in the year 2006.
4. The worker was illegally kept under suspension vide order dated 23.06.06 in contemplation of disciplinary proceedings and after two years from the date of suspension on 11.06.08, the circle head issued a charge sheet to the worker which is dated 11.06.08. The allegations that were leveled against the worker are that he exerted undue pressure on employee and manager of the bank for making entries in his account and thereafter removing vouchers from the bank and utilizing the amount. It is also alleged that along with the charge sheet bank has not furnished the basis of charge sheet to the applicant for giving his explanation so also to produce any evidence that he may wish to tender in his defense. The worker by his application dated 24.06.06 moved before the disciplinary authority had stated that the charge sheet is incomplete as it does not furnish the full particulars of the charges and that the disciplinary authority has abdicated his statutory function of preparing a list as contemplated in relevant rules in favor of the presenting officer. It is also alleged that the charge is based merely on suspicion as the disciplinary authority does not have the material on which charges are supposed to be based with him when h issued the charge sheet.
5. The Assistant General Manager all of a sudden assumed the power of disciplinary authority ad without giving proper opportunity to the worker to defend his case and submit an explanation to the charge sheet as requested by him and application dated 29.09.08 conveying his decision to hold departmental inquiry and appointed the inquiry officer and presenting officer in the case. During the course of domestic inquiry the worker has denied the charges leveled against him. Bank during the course of inquiry has not produced any person or oral witness in support of the charges, therefore, in the eyes of law there was no evidence.

6. The enquiry officer, has performed the role of prosecutor than that of a judge as he has advanced arguments which ought to have been advanced by the presenting officer in order to prove the allegations. There are basic errors, irregularities, violation of principles of natural justice and rules governing the inquiry and appreciation made by the enquiry officer in his report have not been independent.
7. The Disciplinary authority issued notice along with the report of the enquiry officer and directed to the worker to submit his submissions. From the enquiry report it is clear that inquiry officer has proved only two charges against the worker. The finding of the inquiry officer is perverse.
8. After considering the submission of the worker preferred by him before the disciplinary authority after receipt of the enquiry report the disciplinary authority on 31.07.2009 issued show cause proposing tentative punishment to be awarded on the worker .e. to award punishment of compulsory retirement from service and thereafter the disciplinary authority by order dated 30.12.09 has confirmed the punishment as proposed by him in the show cause notice. As such punishment of compulsory retirement is wholly illegal, unjust arbitrary and against the provisions of Bipartite Settlement as also against the principles of natural justice. The appeal preferred by the worker was also dismissed by the Appellate Authority vide order dated 12.03.2010.
9. Thus the worker has prayed that the action of the management of Punjab National Bank, Varanasi in awarding punishment of compulsory retirement from service with effect from 30.12.2009 is liable to be held as unjustified and opposite parties may very kindly be directed to reinstate the worker in the service of the bank with all back wages and consequential benefits, rights and privileges for which the worker has been entitled had the above punishment been not passed against the worker. The worker is also entitled to all such benefits as the Hon'ble Tribunal deems proper in the interest of justice.
10. The Bank has filed its written statement denying the whole allegations of the worker pleaded in his claim petition. However, it is admitted by the bank the worker was suspended, he was issued charge sheet, enquiry was conducted against him by the enquiry officer, he was issued show cause notice, his reply was considered by the disciplinary authority with open mind and thereafter the proposed punishment was confirmed by the disciplinary authority and appeal too was rejected by the Appellate Authority as pleaded by the worker.
11. It is also alleged by the bank that during the course of domestic enquiry the worker had been given full and adequate opportunity of his defense by the enquiry officer. It is denied by the bank that charge sheet is illegal as no supporting documents were enclosed therewith because provisions of Bipartite Settlement do not so provide. The presenting officer submitted documents marked as ME-1 to ME-15 in support of the charges. It is also pleaded by the bank that the documents once accepted by other side need not be proved. It is also denied by the Bank that Enquiry Officer had ever acted like a prosecutor. The Disciplinary Authority has legally and rightly passed the punishment order and the same fully commensurate considering with the gravity of charges found proved against the worker. The appellate authority after due consideration to the points raised by the worker in his appeal has rightly rejected the appeal.
12. In the last, it is submitted that the claim petition is liable to be rejected being devoid of merit.
13. The management to substantiate their pleadings has filed completed enquiry proceedings before this tribunal out of which some documents are in original and some are the photocopies.
14. Considering the pleading of the parties, this tribunal by order dated 24.03.15 had framed a preliminary issue to the effect whether enquiry conducted by management is fair and proper?
15. This Tribunal by order dated 01.05.2015 decided the issue holding that enquiry conducted by the management against the worker is neither just nor legal and accordingly the management was given opportunity to prove the charges.
16. After recording evidence of the MW-1 on 14.10.15, the management moved application for adducing evidence of more witnesses upon which management was directed to submit list of witnesses before the tribunal by 26.11.15. Management however, has not submitted any list of witnesses but examined MW-2 8.12.15 and closed its evidence. Thereafter, the worker Santosh Kumar Gupta filed his affidavit in evidence on 01.01.2016 who was cross examined on 27.01.2016. Worker also did not adduce any other evidence in his defense.
17. On perusal of records it appears that charges leveled against the worker in charge sheet paper no. 3/8 are as under-
 - a. While you working on 30.01.06 at branch office Bhadohi by using undue pressure upon Gur Prasad you got deposited Rs.17481.01 in your OD Account No. 1236009400015083 and the said amount was not authorized by the competent officer despite that you created pressure upon Sri S K Jain you got passed the

amount from him and thereafter you removed the voucher of the said amount and you also utilized the said amount which was got deposited in your account authorizedly.

- b. On 01.06.06 you by creating under pressure upon Sri Basant Lal at Bhadohi Branch got deposited Rs. 7634.28 in your OD A/c No. 1236009400015995 by transfer entry which was not authorized by the competent officer despite that you by using undue pressure upon Sri S K Jain Manager you got passed the amount deposited in your account and later you utilized this amount and removed the concerned vouchers.
- c. Apart from above, you also removed vouchers of dated 30.01.05 for Rs.27940.29, dated 30.01.06 by Rs.1283.00, dated 30.01.06 for Rs. 11772.34, dated 01.06.06 for Rs.3880.00 and dated 01.06.06 for Rs.3754.00.

Thus, you committed gross misconduct under para 5(d), 5(i) and 5(j) of Bipartite Settlement dated 10.04.02.

18. Tribunal has heard arguments of both the sides and have gone through the whole record carefully. It is pertinent to mention here that the relevancy of the documents filed by the management shall be discussed at the appropriate stage.

19. Learned Authorized Representative for the worker argued that worker has no authority to post or pass the voucher in his favour and there is no evidence on record that he pressurized branch manager Sri S K Jain for passing voucher in his favour nor a subordinate staff can ever pressurized or compel his senior for the same. Moreover, when he was informed that the money was wrongly created in his account, he felt sorry and deposited the same without any compulsion. Further he has argued that there is no evidence on record nor he has ever admitted that he removed the vouchers from the bank. It is also the contention that during the course of domestic enquiry no witness was examined and without examination of Sri S K Jain in evidence during enquiry or before this Tribunal, it cannot be presumed that that he has pressurized the persons or officers named in the charge sheet. Learned Authorized Representative for worker also empathically argued that the then Branch Manager Sri S K Jain was also given a charge sheet by the bank and after domestic enquiry he was held liable for passing the vouchers in favor of the worker without ensuring its genuineness and without verifying it. And the branch manager was also punished on this count.

20. Learned Authorized Representative for the management has contended that worker Sri S K Gupta, got the vouchers posted by Sri Basant Lal M.W.1 and got it passed by pressurizing the then branch manager Sri S K Jain fraudulently. He further contended that he has examined two witnesses before this tribunal to prove the charges leveled against the worker. But he has not disputed the fact that the charge sheet was also issued to Sri S K Jain for passing the vouchers in favor of the worker Sri S K Gupta without verifying its genuineness and after domestic inquiry branch manager Sri S K Jain was found responsible and suitably punished by the management for the above said irregularly passing the vouchers.

21. As it was held by the tribunal that the domestic inquiry held against the worker was neither just nor proper and management was given opportunity to lead evidence before this tribunal for proving the charges against the worker and the management has examined only two witnesses as referred to above.

22. Now it is to be seen whether on the basis of evidence adduced by the management before this tribunal management has been able to prove the charge against the worker or not.

23. On perusal of statements M.W.1 Basant and M.W.2 Sanjay Bahadur it is evident that they have not given any statement regarding removal of vouchers from the records of the bank by the worker. They have not uttered a single word in this regard therefore, charge relating to the removal of relevant vouchers by the worker is not found proved.

24. As far as other charges are concerned M.W.1 has stated that he was posted at Bhadohi Branch in the year 2008. As far as he remember that during the service period on 01.06.06 Sri S K Gupta came to him asking for posting the vouchers because he is in need of money. He was doing some work Sri Gupta had requested him to stop the work and got posted vouchers. He had further proved paper no. 16./36 statement of account of S K Gupta showing credit of Rs.7634.28 on 01.06.06. He has further proved the letter dated 17.06.06 given by Sri S K Jain branch manager to Chief Manager, which shows that Sri S K Jain the then branch manager has written in reply to the letter of chief manager dated 14. and 16.06.06 informing him that Sri S K Gupta came to him several times for passing vouchers for Rs.3880/- and Rs.3754.28 and thereafter again on 30.01.06 he came to him for passing the vouchers and requested to pardon him for the mistake committed by him. This witness has further proved copy of voucher paper no. 16/25-26 showing that an amount of Rs.7634.28 was debited from the account of Sri S. K. Gupta and further proved letter of worker Sri S K Gupta that he received Sthappan Bhatta arrear of Rs. 17461 and Rs. 7634.28 on 30.01.06. He has utilized Rs.17461.00 Now it is to be seen how this mistake was committed but in the interest of the bank the amount may be appropriated and he be given arrears of allowances and he may be excused if any mistake is committed. In his cross examination he

has deposed that it is correct that whatever work is done by him, its genuineness is seen by seniors and they will not verify it if any mistake is found.

25. It is clear that witness M.W.1 was examined after more than 9 years of the incident. He cannot supposed to remember actually what happened on 01.01.06 Further he has stated in his evidence that he is giving his evidence on the basis of his memory. It was his prime duty to post the vouchers after seeing the record whether the amount given in voucher is actually due on the bank in favour of worker as arrears and without seeing any calculations chart regarding arrears he posted the voucher and in the same manner Sri S K Jain , the then branch manager had passed it who was also punished for the above act. Had Sri Basant Lal and the then branch manager checked the calculation chart and remained vigilant in their work voucher of the amounts in question would not have been posted and passed. This witness has not given any evidence showing that Sri S K Gupta worker had ever put undue pressure on him or on the then branch manager Sri S K Jain for posting and passing the vouchers.

26. Management has further examined M.W.2 Sanjay Bahadur who was the presenting officer of the domestic inquiry conducted against Sri S K Gupta, he had stated about the proceedings of the domestic inquiry but it is not relevant to discuss as has already been held to be not just and fair by this tribunal. Secondly he is not a witness of fact hence not relevant to prove the fact alleged in the charge sheet. But has proved paper no. 16/23 dated 16.06.06, showing Sri S K Gupta has transferred the amount Rs.17461.01 by debit voucher and in this way adjusted the amount received by him. He has admitted in his cross examination that he was not posted at the branch during the incident. He has further admitted that it is the duty of the officers to see whether the entries in debit and credit vouchers are correct or not at the time of passing the vouchers therefore, from the evidence of this witness it is apparent that he was not posted in the branch where the incident took place and h was simply presenting officer in domestic inquiry against the worker and he had admitted that the amount of arrears received by the worker stands appropriated by the worker. As such from his evidence only this much is established that the amount received by the worker got deposited and adjusted by him and the officer of the bank is responsible for passing the relative vouchers.

27. Worker S K Gupta has examined himself as w.w.1 who has stated that he received the amount as arrears of 8th Bipartite Settlement and the officers by entering into conspiracy and in order to conceal the material evidence removed the vouchers to falsely inculcate him in some misconduct and got issued illegal charge sheet to him by the senior officers of the bank. He has further stated that the amount received by him was adjusted by the bank. In his cross examination he supported his version and nothing has come from his cross examination to disbelieve his evidence.

28. On considering the evidence led by the parties and the documents produced by the management and as discussed above it is found in this case that official of the bank Basant Lal of the bank had posted the voucher in favor of the worker which were passed by the then branch manager without perusing as to whether the amount mentioned in the voucher is actually due to worker by way of arrears of pay or not and did not bothered to see any calculation chart and without seeing the genuineness of the vouchers and without verifying the amount credited the account of the worker Sri S K Gupta. Worker has also been charged for removing the vouchers and the said charges were not proved. On the contrary worker has alleged that these vouchers were released by the bank officer just to involve him in a false case. As the amount credited in the account of the worker has been debited by the bank, therefore, bank has not suffered any financial loss. Worker S K Gupta was not having any seat in the bank to post and pass the vouchers and the alleged illegal act was not done by the worker in crediting the amount in his account but it is done by the bank official and the then branch manager. Management has further failed to prove that worker has pressurized any of official or branch manager in posting and passing the vouchers and it is not denied by the management that branch manager was punished after domestic inquiry for passing the voucher in favor of the worker. If branch manager was innocent he would not have been punished. Thus there appears no role of the worker as given in the charge sheet as well as in passing and posting of relevant vouchers.

29. From the above discussion of evidence, documentary and oral it is proved that the bank has palpably failed to prove the charges leveled against the worker. Therefore, the punishment of compulsory retirement awarded to Sri S K Gupta is set aside being illegal and bad in law.

30. Consequently it is held that the action of the management of Punjab National Bank Varanasi in awarding punishment of compulsory retirement from service to Sri Santosh Kumar Gupta, Special Assistant with effect from 30.12.09 is neither justified nor legal and therefore, worker Sri S K Gupta is held entitled for reinstatement in the service of the bank with full back wages and all consequential benefits. In case he had attained the age of superannuation he will be entitled to receive full back wages seniority and all consequential benefits on the premises as he had never been awarded punishment of compulsory retirement from the services of the bank.

31. Reference is answered accordingly in favour of the worker and against the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1974.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 10/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/167/2000-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1974.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Canara Bank and their workmen, received by the Central Government on 15.09.2016.

[No. L-12012/167/2000-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 10 of 2002

Between :

Sri Sanjay Kumar Awasthi,
62/201 Harbans Mohal,
Kanpur – 208001

And

The Deputy General Manager,
Canara Bank,
Circle Office,
04 Sapru Marg,
Lucknow – 226001.

AWARD

1. Central Government, MoL, New Delhi, vide notification no.L-12012/167/2000-IR(B-II) dated 02.03.2001, has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management of Canara Bank in discharging from service with superannuation benefits and without disqualification from future employment to the workman Sanjay Kumar Awasthi clerk cum typist vide order dated 03.03.97 and appellate order dated 16.12.97 were legal and justified? If not what relief the workman is entitled?
3. The case of the worker in short is that he was appointed by the bank as clerk cum typist and joined Paldi Branch on 01.08.88 at Ahmedabad and later on he was transferred to Lucknow and joined in S.R. Section Circle Office, Lucknow on 21.01.93. He was temporarily deployed to Kanpur Overseas Branch from 17.07.95 to 22.07.95 and he was ordered to report back on 24.07.95. While working at Kanpur Overseas Branch on 21.07.95 he received a telephonic message through branch manager at 4.00 p.m. about the serious illness of his son and death of his one relative. While tallying the cash workman found excess cash of Rs.1.50 lacs and cause of excess cash could not be detected by him despite his serious and sincere efforts. The workman informed the branch manager about the excess of Rs.1.50 lacs and requested for vouching the same so that cash may be closed and he may proceed for his home to arrange treatment for his ailing son. The branch manager asked the worker to keep the excess cash separately in his cash cabin and deliver the keys to the joint custodians of the cash. The worker handed over the keys to Sri R Sampath the first key holder of the double lock who checked the cash and found correct and thereafter he left the branch. He reported back to circle office Lucknow on 24.07.95. The worker vide his reply dated 04.10.95 informed the bank that he was nowhere at fault and there was no financial loss to the bank and he had done everything rightly, correctly and under good faith.

4. By order dated 02.03.96, he was placed under suspension by the authorities of the bank and was also served with a lengthy chare sheet dated 12.04.96 stating that the worker caused willful damage to the property of the bank and had thereby committed gross misconduct of acting in a manner prejudicial to the interest of the bank. He submitted his reply dated 03.06.96 refuting the allegation of charges. Enquiry and Presenting officers were appointed. During inquiry the bank produced four witnesses one was formal who had conducted the investigation into the matter and three witnesses S/Sri A K Asthana, R. Sampath and B.N. Ramaswamy were the delinquent officers connected with the charges. The bank also withheld the first hand information submitted by the branch manager to the controlling office. The bank did not produce any oral or documentary evidence to substantiate the charges leveled against him. Sri Sukhlal was the independent eye witness of fact but the management could not take out anything otherwise from his mouth. The enquiry officer submitted his findings to the disciplinary authority who proposed the punishment of discharge to facilitate lenient punishments for the real delinquents and after granting personal hearing to the worker discharged the worker from the service vide punishment order dated 03.03.97. Against the order of the punishment the worker preferred an appeal which too was rejected by the appellate authority by order dated 16.12.97. In the meantime the bank imposed penalty of censure upon the other three delinquent officers.
5. The worker has challenged the inquiry conducted by the bank on a number of ground viz., inquiry officer acted like prosecutor, disciplinary authority did not apply its mind properly to the evidence and circumstances of the case while concurring with the findings of the inquiry officer, the disciplinary authority before imposing the punishment sought instructions from chief vigilance officer who is superior to him and thereafter acted at his whims and fancies; there was nothing on record documentary or oral that workman ws given excess cash in the morning but the inquiry officer and disciplinary authority erred in presuming the same.
6. Therefore, the worker on the basis of above has prayed that the action of the bank in imposing penalty of discharge from service of the bank and upheld by the appellate authority be set aside and the worker be reinstated in the service of the bank with full back wages, continuity of service and with all consequential benefits.
7. The worker with his claim petition has also filed photocopies of certain documents from 7/21-115.
8. The management filed its reply in which the allegation of the worker has been denied on a variety of grounds. On 21.07.93 the worker was working at overseas branch of the bank at Kanpur as cashier. In the morning Sri R Sampath and B N Ramaswamy who were the key holders have handed over to the claimant a cash of Rs.6,55,950/- which was taken out from the double lock and the same was duly acknowledged by the worker. However inadvertently the key holders have handed over to the worker 6133 pieces of notes of Rs.50 denomination instead of 3133 amounting to a total sum of Rs.8,05,950/-. As such the worker had taken / received excess cash of Rs.1.50 lacs in the denomination of Rs.50/- which was not recorded. The claimant with a view to misappropriate the said amount did not disclose the above facts to the bank officials and on the said date the worker left the branch at about 4.00 p.m. after obtaining permission to attend some personal work. In the evening on the same day while keeping the closing cash inside the double lock and while physically verifying the cash balance in the double lock, a shortage of Rs.1.50 lacs in the rupees 50/- denomination was noticed by the key holders and a search was immediately made in the branch premises and in the search process Rs.50,000/- in Rs.50/- denomination was recovered from the drawer of the cash cabin where the claimant had kept the cash.
9. The Manager Sri A K Asthana along with other staff members rushed to the house of the worker and on finding it locked left a message at the house advising him to come to the branch immediately on his return. At about 9.30 p.m. on the same day the worker has come to the branch. He was informed about the cash shortage and other things. On being enquired by the bank officials the claimant took the manager and other staff members to is house and returned to the branch carrying Rs.1,00,000/- in a shoulder bag and had returned the amount which makes it quite clear that the claimant has misappropriated the above amount and as such committed a gross misconduct.
10. Under the circumstances of the case a departmental proceeding was initiated against the worker in which the worker duly participated. The worker was defended by the representative of his choice and he has cross examined the management witnesses. During the inquiry the worker was given full opportunity of defence. A proper and fair inquiry was conducted and all the provisions of natural justices were duly complied with. The charges were fully proved in the inquiry and the enquiry officer submitted his report to the disciplinary authority holding the worker guilty of the charges. After providing copy of the inquiry report along with show cause notice and after considering the reply of the worker and after providing him personal hearing in the matter passed final order of discharge from the service of the bank against the worker. Appeal of the worker was also dismissed by order dated 16.2.97. It is also alleged by the opposite party that Canara Bank Service Code which is in consonance with the bipartite settlement is applicable to the claimant. As per Chapter XI Regulation 8(1) and Regulation 20(1) of the said Canara Bank Service Code, the Deputy General Manager of the Circle and General Manager of Head Office, Personal Wing are the disciplinary authority and the appellate authority respectively for the worker as such the action taken by them are legally valid and within authority.

11. Lastly it is stated that the claim petition of the worker be rejected being devoid of merit.
12. Management vide application dated 11.09.2001 has filed photocopies of 31 document.
13. On perusal of records it appears that my predecessor had framed two preliminary issues as follows on 11.09.01.
 - i. Whether the domestic inquiry culminating into punishment to the worker was proper and fair?
 - ii. Whether the findings of the inquiry officer suffers with vice of perversity?
14. By order dated 18.12.01 preliminary issue no. (i) was decided in favor of the worker and it was held that domestic inquiry was not fair and proper and the management was given opportunity to prove the charges before the tribunal and it was also observed that preliminary issue no. ii on the point of perversity of finding does not need deliberation as domestic inquiry was held to be not fair and proper.
15. This order was challenged by the management before Hon'ble High Court in writ petition no. 617 of 02 which was dismissed in default of the petitioner by the Hon'ble Court by order dated 22.01.13, thereafter Hon'ble High Court in Misc Single No. 617/02 by order dated allowed the writ petition and quashed the order of the tribunal, meaning thereby that domestic inquiry conducted by the management was held just and proper and it was left open for the tribunal to consider preliminary issue no. ii which was not considered on account of finding recorded by the tribunal on first preliminary issue.
16. On 02.11.15, both the authorized representatives of the parties have moved joint application with the prayer that issue no.2 may be decided along with the merit of the case.
17. As preliminary issue regarding fairness of the inquiry was decided in favor of the management none of the parties led any oral evidence.
18. I have heard the parties representatives at length and have gone through the findings recorded by the inquiry officer in the domestic inquiry at length.
19. As preliminary inquiry has been held to be just and fair now it is to be seen whether the findings of the inquiry officer are based on the evidence recorded during the inquiry are perverse and whether disciplinary authority has committed any error or illegality in concurring with the inquiry report and whether the orders passed by the appellate authority is legal and justified or not.
20. Paper no. 7/20-23 is charge sheet issued to the charge sheeted employee (hereinafter to be referred as CSE). According to charge leveled against CSE is that on 27.07.95 he was entrusted with the work of cashier at the branch. As per the cash register the closing cash in double lock on previous day i.e.20.07.95 was Rs.3537980/- and on 21.07.95 he had acknowledged the receipt of cash taken out from the double lock is Rs.655950/-. On the same day at about 1.00 p.m. he had indented further cash and a sum of Rs.280000/- was taken out from the double lock and was handed over to him. On the said day he had made 22 payments amounting to Rs.691230/- and one receipt of Rs.33/- At the end of the day he had handed over the closing cash to the cash officer amounting to Rs.244050/- and after handing the cash he had left the branch at 4.00 p.m. obtaining permission to attend some personal work. In the evening of the same day while physically verifying the cash balance in the double lock a shortage of Rs.1,50,000/- in the Rs.50's denomination were noticed by the key holder. It was found that at the time of handing over cash to him an excess of Rs.1, 50,000/- was hand over to him. Thereafter a search was made immediately in the branch premises and in the process Rs.50, 000/- in Rs.50's denomination was recovered from the cash drawer of the cash cabin where it had been kept by him. The manager Sri A K Asthana, along with other staff members had then rush to his house and finding it locked left with message requesting him to come to the branch immediately on return. He returned to the branch at 9.30 p.m. on the same day and on being told about the cash shortage. He had taken the manager and other staff to his house and returned to the branch carrying a shoulder bag and handed over Rs.1,00,000/- in the denomination Rs.500x1 and Rs.100x995. This amount was kept in double lock after making necessary entries. This shortage of Rs.1,00,000/- in Rs.50's denomination in the closing has been subsequently shown as put into double lock by making entry of Rs.500x1 and Rs.100x995. He has deliberately and with ulterior motive suppressed the excess cash dishonestly and not in the best interest of the bank and thereby committed gross misconduct.
21. On perusal of domestic inquiry and report of inquiry report of inquiry officer it appears that management has examined 4 witnesses in domestic inquiry comprising of M.W.1 Sri R. Sampat, M.W.2, Sri B.L. Ramaswamy, M.W.3 Sri A K Asthana, Branch Manager and M.W.4 Sri V. Ramesh Kumar, Manager and investigating officer and the presenting officer has relied upon investigation report M.E.1, Cash Register M.E.2, Cash Book M.E.3, Double Lock Register M.E.4, Cash paid instruments M.E.5, Cash Payment Register M.E.6 and written statements of Sri A K Asthana, B.N. Ramaswamy, R. Sampat and oral submission of Sri P S Bajpai respectively and ME-7 to 10 were relied upon by the presenting officer in domestic inquiry. On behalf of worker D.W.1 Sri Sukhlal has been examined and the worker has not examined himself as defence witness.

22. Inquiry officer in his report has submitted that on 21.07.95 Sri S K Awasthi CSE was entrusted with the work of cash and while working out the cash from double lock an excess amount of Rs.1500000/- in 50's denomination were received by the CSE. CSE with ulterior motive suppressed the fact of receipt of excess cash. CSE has left the bank with permission and after his leaving the bank it was detected that excess cash of Rs.1500000/- was given to the CSE out of which Rs.50, 000/- was recovered from the last drawer of the cash cabin which was kept by CSE and the balance Rs.100000/- in cash was taken out by CSE to his house who has misappropriated the amount. Branch Manager along with staff visited his house and it was found locked. Then they left the message for him and thereafter CSE visited the branch at about 9.30 p.m. with a shoulder bag from his house containing Rs.1,00,000/- in denomination of Rs.500/- and Rs.100/- The matter was investigated by M.W.4 Sri V Ramesh Kumar who has also found after investigation that CSE has received Rs.150000/- in excess in the denomination of Rs.50's and failed to report the same.

23. Sri R Sampat M.W.1 has stated in inquiry that an excess payment of Rs.150000/- was made to the CSE from double lock. He also supported the version how the amount of Rs.150000/- was recovered who stated that Rs.50,00/- was recovered from the last drawer of cash cabin in 50's denomination and Rs.1,00,000/- was returned by the CSE brought in a shoulder bag from his residence in the denomination of Rs.500/- and Rs.100x995. This fact has also been supported by M.W.2 B N Ramaswamy who has also replied in his cross examination stating that if I had been in CSE's position I would have informed the excess payment to the officer of the branch. Besides this S K Asthana M.W.3 has also supported the version of other witness as to how the recovery of Rs.150000/- was made. The witnesses of the management have also proved the documents filed and relied upon by the presenting officer.

24. Besides defense witness Sri Sukh Lal who was working in the bank as sub staff had admitted that 21.07.95 while putting the cash in double lock there was some difference in the cash. He also stated that officers of the bank have visited the house of CSE and returned after 2 hours then they visited cash cabin and found 2 bundles of cash in the denomination of 50 and 100. Then the branch was closed and he went to his house. Therefore, this fact is also admitted to the defence witness that Rs.50000/- was recovered from the drawer of cash cabin and thereafter he left the bank.

25. On the basis of evaluation of oral as well as documentary evidence, inquiry officer found charge leveled against CSE as proved and CSE has deliberately suppressed the fact with the ulterior motive of misappropriating the amount and held CSE to be guilty of the charge.

26. Thus it is found that no other opinion other than opined by the inquiry officer is possible to be arrived at considering the facts and circumstances of the case as it was the duty of the CSE to have informed the officers of the branch of having receipt of excess payment of Rs.150000/-, from double lock and by keeping Rs.50,000/- in the last drawer of his cash cabin and returning Rs.1,00,000/- in different denomination after being called by the branch manager further confirms the mala fide intention of CSE to misappropriate the amount.

27. Therefore, it is held that the inquiry officer has not committed any error or illegality in recording his findings as such it cannot be said that the inquiry findings suffers from infirmity or is perverse.

28. Tribunal has also examined the final order of punishment given to the worker as also the appellate order passed by the appellate authority and find that these authorities have taken a lenient view by imposing the punishment of discharge with superannuation benefits and without disqualification from future employment. As such orders of the appellate authority also cannot be said to be suffering from bias.

29. Therefore in result it is held that the action of the management of Canara Bank in discharging from service with superannuation benefits and without disqualification from future employment to the workman Sanjai Kumar Awasthi clerk cum Typist by order dated 3.3.97 an appellate order dated 16.12.97 are legal and justified and worker is not entitled to any relief.

30. Reference is therefore answered against the worker and in favor of the management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1975.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 11/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/73/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1975.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 15.09.2016.

[No. L-12012/73/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 11 of 2012

Between :

Sri Ram Kumar Rathore,
Son of late Amar Nath Rathore,
House No. 37/35 Gilish Bazar,
Kanpur.

And

Assistant General Manager (Kanpur Area),
Bank of Baroda,
118/33 Kaushalpur,
Kanpur.

AWARD

1. Central Government, MoL, New Delhi, vide notification no. L-12012/73/2011-IR(B-II) dated 23.01.2012 has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management of Bank of Baroda, Kanpur/Lucknow in imposing the punishment of removal from service with superannuation benefits upon Sri Ram Kumar Rathore, Head Cashier, Bhitargaon Branch, District Kanpur vide order dated 05.03.09 and dated 17.06.2009 is legal and justified? What relief the workman is entitled to?
3. The applicant while posted at Bhitargaon Branch of the bank and FIR was lodged by the bank and later on he was placed under suspension vide order dated 29.10.2007. It is also alleged that the suspension of the applicant was illegal as the authority that had suspended him i.e. Deputy General Manager was not the competent authority in respect of the worker who admittedly belongs to award staff of the bank. Subsequently he was served with a charge sheet by the said authority in his capacity as disciplinary authority against provision of paragraph 16 of Bipartite settlement dated 10.04.2002. An inquiry was ordered without affording to submit his explanation and without considering the same in terms of paragraph 1 of the said settlement. The inquiry commenced on 27.03.08 and was concluded on 22.08.08 by the enquiry officer and thereafter he submitted his inquiry report on 15.09.2008 to the Asstt. General Manager Kanpur Region of the Bank, who in the capacity of disciplinary authority who forwarded a copy of inquiry report to the worker for submitting his comments over the same thereafter a show cause notice dated 28.01.09 proposing punishment of removal from service with superannuation benefits i.e. pension and or provident fund and gratuity as would be due otherwise under the rules and without disqualification from future employment and he was granted a perfunctory personal hearing where after he inflicted the punishment order as was proposed by order dated 05.03.09 against which the applicant preferred an appeal which too was rejected by order dated 17.06.09 by the disciplinary authority. On the basis of above the applicant has assailed the action of the bank on a number of grounds viz. that after lodging of FIR over the same alleged acts as contained in the charge sheet no inquiry proceedings can be held in terms of para 4 of Bipartite Settlement dated 10.04.02 till one year and as the same was instituted on 27.03.08 after lodging FIR, the same is illegal and deserves to be set aside; mere issuance of charge sheet cannot be held to be the basis of holding the inquiry unless reply to the charge sheet is given by the charge sheeted employee and found to be unsatisfactory, therefore, the inquiry is illegal and deserves to be set aside; there was denial of natural justice in the course of inquiry and after quoting instances of violation of natural justice worker has prayed that the punishment inflicted upon him as upheld by the appellate authority is liable to be set aside and this Hon'ble Tribunal be pleased to hold the action as referred to in the reference order as illegal and unjust and the applicant be reinstated in the service of the bank with full back wages and all consequential benefits.

4. Bank filed written statement in which it is alleged that the worker left the cash cabin on 13.10.07 without locking the door and handing over the keys to some other employee and he was charged for major as well as minor misconduct. It is also alleged that the worker took with him Rs.230100/- from the bank's cash and returned the money to the bank on 5.11.07; inquiry was instituted in the matter against the worker to find out the correctness of the allegations as leveled in the charge sheet and after conclusion of inquiry and considering the reply of the worker tentative punishment as proposed was confirmed by the disciplinary authority and the same was also upheld by the appellate authority; disciplinary authority issued charge sheet to the worker on 7 counts, inquiry in the matter was started and after considering the consent of both the parties the same was finally concluded after following the rules of natural justice; FIR that has been lodged by the bank has no relation in the matter of charge sheet; fair and proper inquiry was conducted against the worker and he was rightly awarded punishment by the disciplinary authority for proved charges. Therefore, there arises no question of interference in the same at the hands of this tribunal.
5. Rejoinder has also been filed in the case in which nothing new has been described by the worker.
6. After exchange of pleading between the parties a preliminary issue regarding fairness of domestic inquiry was framed by the tribunal by order dated 23.10.13.
7. The worker moved an application on 09.04.15 requesting therein that fairness of the inquiry is not being challenged by him therefore it was held that the inquiry held against the worker was just and fair.
8. Worker by application dated 24.09.13 has filed 17 documents which are in the nature of photocopies and again by application dated 13.2.15 has again filed 9 papers and against the same the management by application dated 19.05.15 has filed 3 documents and also by application dated 14.10.15 and 19.08.15 two more documents were filed by the management, the relevancy of these documents will be considered at the appropriate stage.
9. I have heard parties representative and have perused the record of the case.
10. As discussed above, worker has not challenged the fairness of domestic inquiry and on his application inquiry conducted against him has been held to be fair and proper.
11. Now in this case it is to be seen whether on the evidence collected by enquiry officer in domestic inquiry whether charges stands proved or not.
12. Now coming to the charge sheet which is paper no.12/3-4 it reveals that several charges were framed for minor and major misconduct. 1st charge is framed regarding leaving branch premises without closing the cash at about 12.30 p.m. without permission or information and did not return to office on 13.10.07 while working as head cashier at Bhitergaon Branch of the Bank. Other charges from 2 to 5 are regarding un-authorizedly leaving branch without completing the work without locking the door of cash cabin from outside, without locking drawer of cash cabin and without handing over the keys of cash safe and the cash is in his possession. 6th charge is regarding checking of cash at his counter and a shortage of Rs.230100/- was detected in the amount of cash in his tilt at the counter and the 7th charge is regarding cash shortage of Rs.230100/- was detected and debited to G.L. suspense account and the days cash counter be closed on that date.
13. He has not submitted any reply to the charges and inquiry was conducted and FIR was lodged against him.
14. It has come in the inquiry that the amount found short by Rs.23000/- was deposited by worker on 5.11.07 though DD No.464780 dated 2.11.07 of Vijaya Bank as is clear by paper o.18/1 application of worker given to the branch manager and same application for depositing the short amount Rs.230100/- was made to the branch manager by his sons on same day i.e. 05.11.07. Therefore, it is also evident that the worker has deposited the amount without any protest or condition. He has not challenged his default for the shortage of amount but he has simply moved application for depositing the amount along with demand draft. If he was not responsible for shortage of amount of Rs.230100/- he would have given the reasons in the application dated 05.11.07 for depositing the amount or would have deposited the amount under protest.
15. Now coming to the evidence recorded in the domestic inquiry.
16. Management has examined 4 witnesses. M.W.1 Govind Ji Pandey branch manager has proved the letter sent by him to DGM, Bank of Baroda same day wherein it is mentioned that at about 1.00 p.m. head cashier Sri Ram Kumar Rathore suddenly left his cabin with open cash and key of cash and escaped from the branch. Customers have complained about this and bank officials went in market and other possible places in search of worker, but he was not found. Thereafter, in the presence of all the employees cash was counted and a shortage of Rs.2,30,100/- was detected. FIR was registered and when his son was contacted he told that Sri Rathore has taken some poisonous thing at Naubasta House and they are taking him to Hallet Hospital. Some customers have found him going away with a bag. He also

stated that Sri R K Rathore had deposited the amount of rs.230100/- by demand draft dated 2.1.07 which is paper no.22/14.

17. In his cross-examination he has admitted that cash was counted at about 2.30-3.00 p.m.

18. M.W.2 Sri Nagendra Kumar has also supported the charges. He also stated that at about 11.15 a.m. Rs.3,00,000/- were taken out from cash and about 12.15 p.m. customers were complaining delay in payment. At the time of opening the cash Sri Rathore had told him that he had to go to attend natural call then Mr. Jai Ram Singh has told him that Mr. Rathore had gone by keeping his bag across the counter and taking the same with him.

19. In his cross-examination he stated that as per his statement cash of Rs.3,00,000/- from joint reserved and he, Mr. Rathore and peon Mr. Udai went to take out the cash and head cashier was required to make entry in joint ledger book. He has further admitted that shortage of Rs.2,30,100/- was made good by depositing D.D.

20. M.W.3 Manish Kumar Singh Computer Operator has also supported the version of MW.1 and 2.

21. M.W.4 Jai Pal Singh has also been examined.

22. Charged employee examined DW.2 Dr J S Sachan who has stated that Sri Rathore was brought to hospital and it was suspected to be case of poisoning and he was referred to Hallet Hospital and he stayed in hospital for 2-3 minutes. CSE has not examined Sri Chandra Mohan Gupta nor CSE has examined himself in defense but has moved an application on 22.08.08 which is paper No.12/9 wherein he has mentioned that after finishing the work he had left the bank as he was not well and suffering with loose motions and as he was feeling weakness he informed joint manager and went to the medical store for medicine and taken the medicine and thereafter he became unconscious and fell down. On 16.10.07 he recovered his sense and he was told by Chandra Mohan Gupta and family members that FIR has been lodged for shortage of Rs.230100/- and then he arranged the money and deposited the same in the bank. He further stated that shortage of amount is wrong because on 13.10.07 only Rs.1,00,000/- was given to him by Sri Nagendra Kumar and was not taken from joint reserved book as he was not signed the joint reserved book. He requested that his statement be taken on record which has been accepted in inquiry but he has not examined himself as defense witness nor could the management get the opportunity to cross examine him.

23. From the above discussions, it appears that charged employee has given different version at different stages. Firstly his son has told branch manager that Sri Rathore has taken some poisonous substance at Naubasta house and taken to hospital, while in the application given by Mr. Rathore to branch manager on 5.11.07 while depositing the amount he has stated that due to unsound mental state he left the bank on 13.10.07 without informing the branch manager and in the application dated 22.08.08 it is mentioned by him that he was suffering from loose motion and after informing the joint manager he left the bank and has taken some medicine from the shop and was feeling uncomfortable and fell down and became unconscious and recovered his sense on 16.10.07. Therefore, different versions were given by CSE at different stages which makes his defense doubtful although it is not disputed that he was hospitalized in Hallet Hospital and remained there up to 18.10.07 but as Mr. Rathore had deposited DD of Rs.2,30,100/- without any protest or mentioning that he was not responsible for shortage of amount but still he is depositing the amount found short.

24. Now in view of what has been discussed above, the tribunal also gave its anxious considerations to the findings of the inquiry officer and find that the inquiry officer has well discussed the evidence available on the file of domestic inquiry. Therefore, no other view is possible in the facts and circumstances of the case as has been given by the inquiry officer in his finding. Therefore, it is held that the inquiry findings do not suffer from infirmities and the inquiry officer has rightly proved the charges against the worker and the Tribunal is also in conformity with the findings of the inquiry officer.

25. Coming to the point of punishment awarded to the worker by the disciplinary authority which has been considered by the tribunal and it is found that the disciplinary authority has already taken a very lenient view in the award of punishment upon the worker considering his length of service and his past records therefore, question of applicability of the provisions of section 11-A of Industrial Disputes Act, 1947 does not arise in the given facts and circumstances of the case. Accordingly punishment awarded to the worker by the disciplinary authority and confirmed by the appellate authority is upheld by the Tribunal.

26. Accordingly in view of foregoing the action of the management of Bank of Baroda, Kanpur/Lucknow in imposing the punishment of removal from service with superannuation benefits upon Sri Ram Kumar Rathore, Head Cashier, Bhitargaon Branch, District Kanpur vide order dated 05.03.09 and dated 17.06.2009 is legal and justified. Therefore, the workman is not entitled to any relief.

27. Reference is answered accordingly.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1976.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 07/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/80/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1976.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 15.09.2016.

[No. L-12012/80/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 07 of 2010

Between :

Ram Naresh Diwakar,
House No. 638, N-2 Block,
Yashoda Nagar,
Kanpur.

And

The Regional Manager,
Bank of India,
RO-Raj Bhawan Complex,
Canal Road,
Kanpur.

AWARD

1. Central Government MoL, New Delhi vide notification No. 12012/80/2009-IR (B-II) dated 15.01.2010, has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management of Bank of India, Kanpur, in imposing punishment of removal from services of the bank vide order dated 09.10/06 of the disciplinary authority on the applicant Sri Ram Naresh Diwakar is just and proper? What relief the applicant is entitled to?
3. In short the worker in his claim statement has alleged that he was appointed on 01.02.77 at the post of cash-cum-account clerk on permanent basis. On 07.01.06 while the worker was working at banks Ratan Lal Nagar Branch he was working as receiving clerk and paying clerk and due to rush of customer while closing the cash a sum of Rs.1,73,605/- was found short for which he was innocent. He further alleged that after taking loan from others he adjusted the shortage and thereafter he was placed under suspension by order dated 09.01.06 of the branch manager which is illegal and bad in law as branch manager was having no authority to suspend the worker. Zonal Manager vide memorandum dated 31.01.06 directed the worker to reply the said memorandum without conducting any preliminary inquiry in to the said incident. Subsequently he was issued a charge sheet dated 26.5.06 on two counts and in this regard vide order dated 26.05.06 enquiry officer and presenting officers were appointed to inquire into the charges. The charges levelled against the worker are absolutely false and baseless. Enquiry officer under the pressure of the management recorded the statements of the management witnesses in twisted form and when it was opposed the enquiry officer said that later on it will be seen. He received a show cause notice dated 21.09.06 with which copy of inquiry report was also enclosed wherein both the charges were found established. The disciplinary authority by his order dated 09.10.06 removed the services of the worker with superannuation benefits. Appeal preferred against the punishment order was also rejected

vide communication dated 02.02.07 in a cursory manner by the appellate authority. It is further pleaded by the worker that the whole inquiry held against him is against the principles of natural justice. Accordingly it is prayed that the punishment order along with appellate order be set aside and he be reinstated in the service of the bank with full back wages continuity of service and with all consequential benefits.

4. The opposite party filed its written statement refuting the whole claim of the worker alleging that the charges levelled against him were found fully proved by the enquiry officer. The enquiry officer gave full opportunity to the worker to defend his case in the inquiry. The witnesses of the management were fully cross-examined by the defence representative at length. The enquiry officer, after applying his mind to the records of enquiry and evidence available on record have recorded a rational findings as per rules of natural justice. The disciplinary authority concurred with the findings of the inquiry officer and issued a show-cause notice proposing punishment of dismissal on charge No.1 and bringing down to two stages on charge No.2. After providing personal hearing to the worker the disciplinary authority on charge No.1 awarded punishment of removal from service with superannuation benefits and on the punishment on charge No.2 as proposed by him was maintained.

5. Worker preferred an appeal against the punishment order and the appellate authority by its order dated 20.01.07 maintained the punishment awarded to the worker by the disciplinary authority.

6. On the basis of above it is alleged that the claim of the worker is devoid of merit and is liable to be rejected and accordingly should be rejected.

7. Worker has also filed rejoinder but nothing new has been pleaded therein except reiterating the facts already pleaded in his claim petition.

8. On the pleadings of the parties preliminary issue regarding the fairness of domestic inquiry was framed on 11.12.13 and parties were given opportunities to lead evidence if any. Parties did not adduce any evidence and worker absented from the proceedings before this tribunal and none appeared on his behalf to argue on preliminary issue. Therefore, argument of learned representative of the management were heard and by order dated 04.08.15 preliminary issue was decided against the worker holding that domestic inquiry held in this case is just and fair and a date was fixed for final arguments in the case but after availing several opportunities the worker did not make his submissions therefore, the arguments of learned representative for the management were heard in this case.

9. Management in this case has filed entire proceedings of enquiry along with enquiry report, show-cause notice, final order and order of appeal.

10. Now the tribunal in the facts and circumstances of the case has to examined the findings of the enquiry officer as to whether the enquiry officer has recorded his findings after properly appreciating the evidence oral as well as documentary adduced before him by the parties during the course of domestic inquiry and as to whether on the basis of same the enquiry officer has been able to prove the charges levelled against the worker by the bank.

11. Now looking to the charge it appears that the worker has been charged on two counts i.e. No. 1 That Sri Diwakar committed defalcation of banks cash to the tune of Rs.173605/- on 07.01.2006 while functioning as cashier in-charge and deceitfully tried to cover of the same by placing Rs.5/- and Rs.100/- denomination notes between packet of Rs.500/- denomination. To cover up the shortage a stand was taken by him that it may be due to excess payment made by him. On his inability to make good the cash found short the branch suspense debit genesis 30 account was debited by Rs.173605/- in order to close the cash.

12. Charge No.2 is that on 07.01.06 after business hours he closed the cash and brought the cash for lodgement in the safe and Sri Rajeev Officer proceeded to physically verify the cash held by him with the balance recorded by him in the DCB for this day. In a grossly irregular manner he caught hold of his hand and physically obstructed him from carrying out his duty. As a result Sri Rajeev had to call out for help. Hearing this call for help Sri Tilak Raj Manager came out with his subordinates after which only he allowed Sri Rajeev to commence incomplete the physical counting of cash.

13. In the inquiry management examined M.W.1 Mr. Rajeev, M.W.2 Mewa Lal, M.W.3 Tilak Raj and M.W.4 Sri S K Baijal who were duly cross-examined by the defense representative. Presenting officer has also filed documents during the inquiry which were marked as ext. M-1 to M-10 and these documents were also inspected by the defence representative on 09.06.06. CSE Sri Diwakar did not adduce any oral or documentary evidence nor examined himself.

14. In the proceedings held on 07.06.06 CSE Sri Diwakar has admitted the charges levelled against him in the charge sheet. In the proceedings of 12.06.06 Presenting Officer requested to the enquiry officer that since the CSE has admitted the charges in unequivocal terms therefore, enquiry should be concluded but this request was not acceded to by the enquiry officer and on the same day presenting officer handed over the copies of Ext.M-1 to M-10 and defense representative confirmed that the he has inspected the documents produced by the presenting officer.

15. It also appears from the statements of management witnesses recorded in the inquiry before the enquiry officer that all of them had supported the charges levelled against the worker with one voice and the worker was not able to controvert them and did not adduce any evidence in his defense nor examined himself before the enquiry officer.
16. Therefore, considering the facts and circumstances of the case tribunal is of the opinion that the enquiry officer has adopted a fair and proper procedure in holding inquiry and he gave full opportunity to the worker to adduce his evidence but for the reasons best known to the worker he did not avail the opportunity given by the enquiry officer and did not produced any witness nor examined himself in his defense.
17. By perusing the enquiry findings it also reveals that the enquiry officer after properly appreciating the evidence of the management has rightly concluded that the charges stands proved against the worker and it cannot be said that the findings of the enquiry officer suffers from infirmities as pleaded by the worker in his statement of claim.
18. It is also pertinent to mention here that all the management witnesses were properly cross examined by the defense representative but from the evidence available on domestic inquiry the tribunal is unable to conclude that the defense representative has been able to show that the evidence of the witnesses is not reliable and as such cannot be accepted. As the tribunal is of the opinion that the enquiry officer after giving his anxious consideration to the facts and circumstances of the case as also to the material on record as also evidence available has rightly concluded that the charges levelled against the worker stands fully proved and as such it cannot be said that the findings of inquiry officer suffers from infirmity or is against the principles of natural justice. Therefore, it is held that the finding of the enquiry officer is just and fair and need not be interfered at the hands of the tribunal.
19. Next it will be examined whether the punishment imposed upon the worker by the disciplinary authority on the proved misconduct is just and fair. From the records of the case it is quite evident that disciplinary authority after receipt of the inquiry report provided a copy of the same to the worker and after giving opportunity of personal hearing the disciplinary authority by modifying the proposed punishment of dismissal from service awarded the punishment of removal from service with superannuation benefits by order dated 09.10.06.
20. To the mind of the tribunal considering the seriousness and gravity of the misconduct by the worker disciplinary authority has already taken a very lenient view in the matter of award of punishment and converted the proposed punishment into removal from service with superannuation benefits instead of dismissal from service as proposed by him in his show cause notice.
21. Appeal preferred by the worker was also rejected by the appellate authority and the punishment awarded to the worker was maintained.
22. Thereafter worker has filed a mercy petition but the same was not considered as it was beyond the scope of bipartite settlement.
23. It also appears to the tribunal that considering the seriousness of the misconduct committed by the worker and which was fully established against him the disciplinary authority after taking lenient view inflicted punishment of removal from service with superannuation benefits which under no circumstances can be said to be stigmatic and needs no interference under section 11-A of Industrial Disputes Act, 1947.
24. Having concluded that the charges stands proved against the worker which is of serious nature by the enquiry officer and the disciplinary authority had also taken a lenient view in awarding punishment the tribunal confirms the finding of the enquiry officer and punishment awarded to the worker. As a result of which worker is not entitled for any relief as claimed by him and it is held that the action of the management Bank of India in imposing the punishment of removal with superannuation benefits upon CSE Ram Narain Diwakar vide order dated 09.10.06 is just and fair.
25. Reference is answered accordingly against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1977.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 24/07) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/24/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1977.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/07) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 15.09.2016.

[No. L-12012/24/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 24 of 07

In the matter of Dispute between :

Sri R P Singh,
3/13, Mathura Nagar,
Aligarh.

And

The Deputy General Manager,
Central Bank of India,
Zonal Office,
Sanjay Place,
Agra-28001.

AWARD

1. Central Government MoL, New Delhi, vide notification no. L-12012/24/2007-IR (B-II) dated 04.07.2007, has referred the following dispute to this tribunal for adjudication.
2. Whether the action of the management of Central Bank of India, Regional Office, Agra dismissing Sri R P Singh son of Late Sri Kalyan Singh from the bank services vide order dated 20.10.05 of disciplinary authority and confirming the same by appellate authority vide order dated 09.01.06 is legal and fair? If not what relief the workman concerned is entitled?
3. Brief facts of the case are that the workman Sri R P Singh was appointed on 11.01.71 by the opposite party at the post of clerk and thereafter the bank promoted him at the post of Special Assistant in 1992 with retrospective effect 1987 and in this way the total length of the service of the worker in the bank remained for about 34-35 years. His work and conduct remained satisfactory. It is also alleged that the worker took active participation in trade union activities which was highly disliked by the authorities of the bank and as a result of the same the authorities of the bank started feeling animosity against the worker. It is also the case of the worker that he used to represent his coworker in disciplinary cases and being trade union worker he raised several industrial disputes before the conciliation machinery as provided under the I. D. Act but the authorities of the bank felt their personal insult and started searching appropriate opportunity to remove the worker from the service of the bank by hook or crook.
4. In the year the worker was transferred from Agra to Aligarh and was posted as In-charge of Extension Counter of main branch of Aligarh where he was placed under suspension by order dated 17.02.04 for so called acts of misconduct and the misconduct that were leveled against him do not come within the parameter of defined misconduct. Here it would not be out of place to mention here that only the worker was transferred from Agra to Aligarh and none staff of the branch was even shifted from their respective counters. The worker challenged the said suspension order before the Hon'ble High Court, Allahabad, by filing CMWP No. 8430/04 and the Hon'ble High Court granted stay order against the impugned order of suspension. Thereafter the worker was served with charge sheet dated 16.03.04 by the competent authority of the bank in which the gravity of the charges were enhanced in an arbitrary manner and even the worker was not given any opportunity to reply the charge memo. In this way the worker was prevented from his legitimate right to reply the charge memo. In the charge memo competent authority has also appointed enquiry officer and presenting officer which is against the rules of natural justice.
5. It may be pointed out that apart from above pleadings, the worker has raised such pleadings touching the fairness of inquiry, which keeping the judgment of the Hon'ble High Court Allahabad given by Division Bench, in mind are not necessary to be adumbrated. Enquiry officer submitted his findings before the disciplinary authority copy of which was never supplied to the worker prior to the issuance of notice of proposed punishment order.

6. It is also alleged by the worker that the findings recorded by the enquiry officer after evaluating the evidence on record is absolutely perverse and no ordinary man can arrive at such a conclusion that has been arrived at by the enquiry officer and on the basis of such finding worker could not have been punished.

7. It is also alleged that one clerk of the bank by name Sri Surendra Kumar was also found responsible in putting the bank for suffering financial loss of Rs. 7.90 lacs who after inquiry was issued propose punishment of discharge from service by his disciplinary authority but later on while passing final order he was awarded with the punishment of reduction of two stages in time scale of pay by the disciplinary authority and his suspension was revoked. As such the punishment awarded to the worker is discriminatory and with malafide intention. The appellate authority has also confirmed the punishment awarded to the worker without proper application of mind. Thus the whole procedure right from the stage from placing the worker under suspension till the stage of passing final order and appellate order is against the rules governing the service conditions as also against the principles of natural justice. As such it has been prayed by the worker that the action of the disciplinary authority and appellate authority be set aside and the worker be reinstated in the service of the bank with full back wages and all consequential benefits including seniority.

8. The bank has filed its reply against the claim petition of the worker and it is stated that the worker does not have sound integrity and has not discharged his duties in the bank with sincerity and due diligence at all times which is clear from the charge sheet dated 08.08.88, in which he was awarded punishment of censure by the disciplinary authority. The worker prima-facie was found involved in the fraud of Rs.7.90 lacs took place at the extension counter at Aligarh and considering the gravity of the misconduct committed by the worker he was rightly placed under suspension vide order dated 17.02.04 and he was directed to reply the charges within a period of seven days from the date of receipt of the charge memo. It is admitted by the bank that the worker had approached the Hon'ble High Court, Allahabad and the Hon'ble High Court had stayed the suspension order of the worker with the direction that the enquiry as contemplated against the worker may go on and thereafter the worker replied the charge memo which was not found satisfactory by the disciplinary authority and it was decided that a regular inquiry should be constituted to inquire into the acts of omission and commission committed by the worker and he was issued charge sheet dated 16.03.04 by the disciplinary authority. Enquiry officer and presenting officer were appointed. Management has also submitted that the worker has not whispered even a single word in his claim petition that what kind of prejudice has been caused to him if the appointment of the enquiry officer and presenting officer has been done prior to receipt of the reply of the worker. The claimant was given adequate opportunity of his defence and the claimant was present during the course of inquiry throughout and the enquiry officer has complied with the rules of natural justice for conducting the domestic inquiry against the worker. The courier service that was utilized by the worker was not approved by the bank and the FSCM was never received by the bank by branch office Panchkula. The copy of the inquiry report was duly provided to the worker along with show cause notice for proposed punishment. It is also alleged by the bank that the degree of misconduct committed by the worker is much higher than that of misconduct committed by Sri Surendra Kumar Clerk of the bank and there is no illegality in the action of the disciplinary authority if the disciplinary authority has modified its tentative decision by awarding reduction of two increments, as such both the cases are at different footings and the claimant cannot be allowed to take any benefit with the punishment awarded to the worker. It is further alleged that the Hon'ble High Court, Allahabad in special appeal no. 251 of 2006 has held that since the enquiry was conducted fairly and the charges do not appear to be moonshine, the writ court cannot interfere excepting on certain well settled principles, as such it can safely be presumed that the enquiry was held against the worker in a fair and proper manner. The bank has lost confidence in the worker as such the worker has rightly been awarded punishment on proved misconduct. The bank has also reserved its right to prove the charge afresh before the tribunal in case this tribunal for any reason comes at a conclusion that the inquiry conducted by the bank is not fair and proper. Lastly it is alleged that it is settled position of law that what punishment is to be required to be imposed upon the delinquent employee found guilty of gross misconduct is the sole discretion of the disciplinary authority and under no circumstances the same can be interfered by the courts adjudicating the issue on merits.

9. Lastly it is prayed by the employer that the claim petition of the worker be rejected outright being devoid of merit holding that the worker is not entitled for any relief.

10. Both the parties have filed documents which shall be discussed at the appropriate stage.

11. I have heard the party's representatives at length and perused the records.

12. On perusal of records, it appears that worker Sri R. P. Singh had filed CMWP No. 77/26 of 2006 against Sri A. K. Bajpai and two others assailing the show cause notice and order of suspension. Hon'ble High Court Allahabad vide Order dated 16.02.2006 dismissed the writ petition on the ground of alternate remedy. Thereafter, worker Sri R. P. Singh being aggrieved by this order of single bench of Hon'ble High Court had filed special appeal no. 251/2006 against said Sri Bajpai and two others. The special appeal had also been dismissed by order dated 27.03.2006 with observation dated since the enquiry was conducted and the charges don't appear to be moon sign, the writ court can't interfere accepting on certain well settled principles.

13. As Hon'ble High Court in special appeal had held that domestic enquiry to be fair my Ld. Predecessor vide order dated 18.05.2011 also held that domestic enquiry is held fair on the basis of Order of Hon'ble High Court.
14. Thereafter, worker has moved an application for cancelling the proceedings of the enquiry on the ground that it was done with malafide intention against the worker. The application of the worker was rejected on 01.05.2015 on the basis of Order of Hon'ble High Court passed in special appeal where in it was held that enquiry was fairly conducted.
15. AR, of the management has moved an application that entire enquiry proceedings as well as prosecution documents in support of charges are not traceable as the same were destroyed in fire, on which Regional Manager of Central Bank of India, Agra, Sri J. S. Sahney was examined as CW-1 who has stated on oath that enquiry proceedings are not traceable and possibility can't be ruled out that documents and enquiry file might have been burnt In 2010 in a Fire Stroke in Zonal Office and Regional Office, Sanjay Place, Agra.
16. On this bank was given further time to search and file the relevant records.
17. Management thereafter filed enquiry proceedings and documents.
18. As in this case domestic enquiry was held to be fair and proper, it is to be seen whether findings of Enquiry Officer is in accordance with the evidence recorded in the enquiry or perverse and whether Disciplinary Authority has acted judiciously and impartially while concurring with the findings of the enquiry officer and whether or not Disciplinary Authority and Appellate Authority are justified in recording the punishment of dismissal against the worker, is just and fair.
19. From perusal of Charge Sheet Paper No. 3/5-9, it appears that charge sheet was issued to the worker on 10 counts. In brief, the crux of the charges are that Sri R. P. Singh, Special Assistant, Regional Office, Agra, while working at Extension Counter "KSGA" of main branch of the Bank at Aligarh, during the period from October, 2003 to February 2004 has committed the acts of misconduct by opening CD Account No. 176 of Rajesh & Co. on 18.09.2003 without issue of any cheque book and has taken away all the relevant documents relating to opening of account with malafide intention to suppress his misdoings. He also opened HSS Account No. 3825 of Sri Rajesh Kishore without obtaining address proof on wrong address and issued letter of thanks to address of the Hotel and not issued any letter of thanks to his introducer and in the new account of Sri Rajesh Kishore heavy amount i.e. Rs.160000/, 310000/ and 320000/ were collected and withdrawals were allowed against the guidelines of Central Office. He also issued second cheque book to Sri Rajesh Kishore while remaining cheques of earlier cheque book were not presented and 3 cheques for heavy amount were returned for insufficient balance.
20. It is surprising and appears against disciplinary rules as well as principles of natural justice that no specific reply of charge sheet was called upon from the worker and in the absence of reply of the worker, enquiry was held. During the course of enquiry proceedings, management examined two witnesses S/Sri G. S. Siddhu, Senior Manager as MW-1 and Sri S. K. P. Singh, Senior Manager, ZO Agra (formerly RO Agra) as MW-2 and has filed 44 documents in support of charges.
21. On behalf of Defense worker has examined DW-1 Sri Rajendra Prasad CTO, DW-2 Sunaina Chatterjee, DW-3 Bhagwati Prasad and DW-4 Satish Chandra Varshney and submitted 50 documents. However, worker did not examine himself in defense.
22. I have also examined the findings of the enquiry officer based on the evidence recorded during the enquiry proceedings and come to the conclusion that the enquiry officer after giving due deliberation and after applying his mind has come to a concrete decision that the charges leveled against the delinquent employee is found established as a result of which the bank has to suffer financial loss of Rs. 7.90 lacs. Thus there remains no doubt that due to negligent working of the worker and considering the charges leveled against him, it is very difficult to deviate from the findings of the enquiry officer, which is found to be just and fair particularly under the circumstances that the worker did not examine himself before the inquiry. Therefore, considering the whole inquiry proceedings held against the delinquent employee the tribunal is of the opinion that the enquiry has been held against the worker was in a fair and proper manner and the inquiry officer has rightly come to the conclusion that the charges stands proved against the worker. Likewise it is also held that the disciplinary authority as well as appellate authority has rightly concurred with the findings of the enquiry officer.
23. Now it will be examined if the punishment awarded to the worker in the light of proved misconduct is just and proper or the same is shockingly disproportionate considering the nature of the charges proved against the worker comparing with the punishment awarded to the Special Assistant by name Sri Surendra Kumar.
24. In this connection M.W.2 Sri SKP Singh Sr. Manager has admitted in his cross examination that it was the responsibility of offices of the bank to compare the signatures from realizing branch i.e. Panchkula by telephone or by fax or by letter and it is further admitted that in case signature of concerned officer are not tallying on FSCMs then the responsibility of the concern officer was not to pass FSCMs and immediately after confirmation from realizing branch

he should have vouched FSCMs. He has further admitted in question no.38 that amount was deposited in the account on credit advice received in form 6.

25. From the evidence of M.W.2 SKP Singh it is clear that if the officer of the bank posted in the main branch would have remain vigil before sending the advise to extension counter branch and before passing FSCMS would have tallied the signatures of officers of Panchkula Branch the amount n question would not hve been credited in the concerned account.

26. Worker in his pleadings has pleaded that the fact that Sri Surender Kumar posted in the main branch had send the advice to the extension counter after passing FSCMs and on the basis of the same worker had no authority to further verify the same except giving credit of the amount of cheque. In its reply the bank admitted that Surender Kumar was also responsible for the loss of Rs.7.90 lacs for his acts of lapses by passing FSCMs but has alleged that his responsibility was less therefore, less punishment was awarded to him.

27. Worker has filed final order of the disciplinary authority in the case of Surender Kumar, Special Assistant Main Branch which is dated 02.03.0. As the worker was awarded punishment much earlier to this therefore, it could not be presumed that the worker could be in position to file the same in his domestic inquiry. Therefore, this final order cn be looked into as explanatory document in support of the pleadings of both the parties, which is paper o. 3/68-75, which worker has filed along with his claim statement wherein it is held that Surender Kumar has passed FSCMs without tallying the signature of the officers of Panchkula Branch with the specimen signatures and it was also held that he was negligent in performing his duties as per banks rules and due to his negligence bank has to suffer a loss of Rs.7.90 lacs and was punished by reduction ot two stages in time scale for a period of 5 years.

28. Therefore, from the above discussions of evidence and facts and circumstances of the case it can be safely held that both Surender Kumar Special Assistant and the worker Sri R P Singh, In-charge of Extension counter of main branch of the bank at Aligarh both are wholly and jointly responsible as both of them has acted against the norms ad rules of the bank causing financial loss of Rs.7.90 lacs to the bank.

29. Worker has submitted that he might have committed certain irregularities in opening of accounts as it was not done in accordance with the rules of the bank, but he can't be made sole responsible for releasing the payments of Rs. 1,60,000/, 3,10,000/ and 3,20,000/ to Sri Rajesh Kishore as the payments of these amounts were made by him on the advise issued by Sri Surendra Kumar, Special Assistant working in the main branch of the bank. He further contended that Sri Surendra Kumar was also charge sheeted for passing the FSCMS without tallying the signature of officers of Pachkula Branch with the specimen signature held on record of the branch.

30. After conducting domestic enquiry, he was found guilty of the misconduct which was of grave nature and Disciplinary Authority in the case of Sri Surendra Kumar proposed the punishment of Discharge with superannuation benefits and thereafter in the final order, the Disciplinary Authority imposed punishment of reduction by two stages in the time scale of pay for a period of 5 years.

31. It is contended by the worker that punishment of dismissal awarded to him is highly disproportionate taking into consideration of the punishment awarded to Sri Surendra Kumar whose misconduct is equally of serious in nature who was found passing FSCMS without verifying the Signatures of Officers of Pachkula Branch from the specimen held on record of the branch and in that circumstances, the worker Sri R.P. Singh was under obligation to release the amount.

32. AR for the management contended that worker Sri R.P. Singh was wholly responsible of opening the Savings Bank and Current Accounts dehorning the relevant rules of the bank and further contended that this Tribunal is not competent to take into consideration any other documents filed by the worker which are not part of the domestic enquiry as given in the proviso of Section 11-A of the ID Act.

33. To appreciate the arguments advanced by the representative for the bank, the tribunal would like to advert to the pleadings of the worker raised in paragraph no.23 of statement of claim and reply thereof submitted by the bank in its written statement. It is categorically pleaded by the worker in paragraph no.23 that special assistant of main branch of the bank Sri Surendra Kumar was found guilty for vouching the instruments without verifying the signatures of the officers of the Panchkula Branch as a result of which the bank suffered a financial loss of Rs.7.90 lacs and accordingly at the first instance, the disciplinary authority had proposed him the punishment of discharge from the services of the bank but later on in the final orders passed by the disciplinary authority, Surendra Kumar was awarded punishment of reduction by two stages in time scale of pay. In reply to this the bank has submitted in its written statement that the degree of misconduct committed by the worker is higher than Surendra Kumar, Special Assistant of the main branch, therefore, the worker cannot be allowed to take any benefit of the punishment awarded to Sri Surender Kumar, Special Assistant of the main branch of the bank.

34. It is pertinent to mention here that both the worker and Surender Kumar were sailing in the same boat and due to their joint misdeeds bank has to suffer financial loss. Therefore, on the ground of parity, the tribunal has to weigh the

punishment awarded to both the persons for the same cause in a judicious and impartial manner. The bank would not have suffered the financial loss had the instruments would not have been vouched and send to the extension counter of the branch the amount in question would not have been mis-utilized by the account holder. As such it is held that the punishment awarded to the worker is highly discriminatory which cannot be allowed to sustain in the eye of law.

35. Therefore, considering this aspect of the matter the tribunal is of the opinion that the punishment awarded to the worker is shockingly disproportionate when compared with the punishment awarded to Sri Surender Kumar. The tribunal is clothed with ample powers under the provisions of section 11-A of the Industrial Disputes Act, 1947, to interfere with the punishment if it is found to be by way of unfair labor practice, discriminatory etc.etc., at provided in the 5th Schedule of the Act.

36. Since the tribunal has already held that the punishment awarded to the worker is quite harsh and disproportionate as compared to the punishment awarded to Sri Surender Kumar, the tribunal is of the opinion that the ends of justice would be met if the punishment awarded to the worker is modified into compulsory retirement with superannuation benefits and accordingly the punishment of dismissal from the service awarded to the worker is hereby modified into compulsory retirement from service with superannuation benefits from the date when the punishment of dismissal was made effective.

37. Accordingly in view of above discussions, it is ordered that the worker would be deemed to have compulsorily retired from the service of the bank with superannuation benefits instead of dismissal from the service of the bank.

38. Reference is answered accordingly in favor of the worker and against the bank.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1978.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 67/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.09.2016 को प्राप्त हुआ था।

[सं. एल-12011/95/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1978.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 15.09.2016.

[No. L-12011/95/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 67 of 2015

Between :

The General Secretary,
Central Bank Employees Congress (UP),
C-1241 (MIG) Rajajipuram,
Lucknow - 226017

And

The Regional Manager,
Central Bank of India,
Regional Office,
372/18-B, Civil Lines,
Gwalior Road,
Jhansi - 284001.

AWARD

1. Central Government, MoL, vide notification No.L-12011/95/2014-IR(B-II) dated 06.09.2015, has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management in declining the payment of medical bills to Sri Arvind Kumar Sharma is just and proper and if not what relief is entitled to?
3. After receipt of reference order several notices were issued to the claimant for filing his claim petition along with relevant documents but neither he appear in person before court nor filed any claim petition. It thus appears that he is not interested in prosecuting his case before the tribunal.
4. The tribunal in the above circumstances has become absolutely handicapped except to answer the reference against the claimant for want of pleadings and proof.
5. Accordingly it is held that the worker is not entitled for any relief pursuant to the present reference order.
6. Reference is answered accordingly against the worker / union.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1979.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 76/11) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/31/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1979.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/11) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 15.09.2016.

[No. L-12012/31/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR**

Industrial Dispute No. 76 of 11

Raj Kapoor son of late SN Kapoor,
House No.439/E-2 Single Story,
Barra-2,
Kanpur.

And

The Chief Manager,
Allahabad Bank,
Zonal Office,
113/58, Swarup Nagar,
Kanpur-208002.

AWARD

1. Central Govt. MoL, New Delhi, vide notification No.L-12012/31/2011-IR(B-II), dated 18.08.11 has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of Allahabad Bank Kanpur in imposing the punishment of dismissal from the services of the bank on Sri Raj Kapoor vide order dated 16.02.10 is just and proper? What relief the concerned workman is entitled to?

3. The case of the worker in short is that while he was working as special assistant at bank's Govind Nagar, Kanpur Branch, he was placed under suspension by the Deputy General Manager vide order dated 11.06.08, without assigning any cogent reasons with the condition that during the period of suspension he will not enter into the premises of the Zonal Office, Kanpur of the bank or any other branch/office of the bank and he may only enter the premises of the branch where his saving bank account is maintained with proper permission of the manager of that branch for the purposes of operating his saving bank account and or drawing the subsistence allowance payable to him. The bank further by letter dated 24.06.08 paper no. 14/37 informed the worker on the subject of operation of SB/STF/77 which is in the name of the worker that the bank had instructed Chief Manager, Govind Nagar Branch to open a new account in which his pay and allowance as per rules in the case of suspended employee from the month of June 08 onwards will be credited in that account. The wife of the worker had moved before the Hon'ble High Court Allahabad by filing writ petition no. 40225 of 08 for issue of writ of mandamus commanding respondent no.2 to release the amount in favor of the petitioner from saving bank account no. SB/STF/77. The said petition was finally decided by the Hon'ble High Court Allahabad by order dated 19.08.08 leaving it open to the petitioner to submit an application before respondent no.2 raising her grievance which may be considered and appropriate decision may be taken by respondent no.2 expeditiously preferably within a period of one month from the date of filing of the application along with a certified copy of the order.

4. Thereafter the worker was issued a charge sheet dated 18.12.08, which inter-alia goes on as under.

5. While posted and functioning as Special Assistant at Bank's Govind Nagar, Branch during the period from 06.08.01 to 10.06.08 you have allegedly committed the acts of omission and commission as under-

1. On 11.09.06, Smt. Tara opened a saving bank account bearing no.22577 with Rs.250/- in cash and did not make any deposit in the account therein after 27.04.07 but her account shows various transaction by way of transfer from bank's overdue FDR account on different dates without any voucher to afford credit in her account which were created by you by issuing the user ID of other officials at the branch.

On the basis of such unreal balance, the other official allowed drawings from the account through withdrawal forms signed by the account holder on various dates and payment of which was received by you. Thus an amount of Rs. 248744/- was fraudulently withdrawn from bank through the said account with connivance of the account holder.

2. On 25.09.07 Sri Kishan, Kumari Anjali and Smt. Tara opened a saving bank account bearing no.24844 with Rs.500/- in cash and did not make any deposit in the account thereafter but her account shows various transaction by way of transfer from bank's overdue FDR/ Reinvestment fund account on different dates without any voucher to afford credit in their account which were created by you by issuing the user ID of other officials of the branch.

On the basis of such unreal balance the other officials allowed drawings from the account through withdrawal forms signed by the account holder on various dates and the payment of which was received by you. Thus an amount of Rs.929064/- was fraudulently withdrawn from Bank through this joint account with connivance of the account holder.

6. The reply to the charge sheet submitted by the worker was not found satisfactory by the disciplinary authority therefore it was decided by him to hold a regular inquiry into the alleged charges and enquiry officer and presenting officers were appointed by order dated 27.01.09.

7. It is pertinent to mention here that the worker did not participate in the inquiry nor adduce any evidence in the case.

8. On behalf of the management apart from adducing documentary evidence, management has examined 12 witnesses in support of the charges.

9. After concluding the inquiry the enquiry officer submitted his report before the disciplinary authority who concurred with it and issued show cause notice to the worker but the worker did not choose to avail the opportunity. Finally the disciplinary authority passed his final decision dated 16.02.10, whereby penalty of dismissal was awarded to the worker.

10. Apart from above it is also alleged by the worker that the punishment order dated 16.02.10 is liable to be set aside even without entering into the merits of the case as the same is absolutely in violation of statutory instructions/directions of vigilance department of the Head office of the Bank. It is also pleaded that various circulars such as dated 10.10.03, 09.02.09, 20.04.10 and 23.10.10 have been issued by the head office of the bank from time to time in consultation with the vigilance department as per guide lines issued by the Reserve Bank of India invariably prescribes the same method to investigate the cases of fraud and misappropriation of bank's fund. In circular dated 23.10.10, issued

by the Chief Vigilance Officer of the bank it is categorically mentioned therein that in all cases of fraud it is mandatory to lodge FIR immediately after detection of fraud not only to nab the culprits / fraudsters to recover the involved amount and or to restrict them from further defrauding others but also to legally pursue with the police/CBI/ other prosecuting agencies and to obtain permission for closure of the case from Reserve Bank of India. It is also alleged that the worker through Right to Information Act, 2005 obtained copies of Vigilance Manual dated 10.10.03, which categorically provide that in cases of financial frauds of the value of Rs.1,00,000/- and above which involve outsiders (private parties) and bank staff should be reported by the zonal Office/Zonal Heads concerned to a senior officer of the State CID/Economic Offence Wing of the state concerned as per instructions issued by the head office of the bank vide circular dated 04.02.04.

11. The worker on coming to know about the fact through the reply of the Chief Manager of the bank that the bank is suspecting the involvement of the worker in some fraud case, the worker without causing undue delay made a representation dated 07.10.08 to the senior manager clearly stating therein that from the contents of your letter the allegations are of very serious nature which require thorough probe from some outside agency like police authorities or CBI, as the case may be, that are competent to investigate the matter and to find out the real culprit involved in the alleged fraud but at any rate it is not open for the authorities of the bank to initiate the disciplinary action against him to find out real culprit involved in the present fraud which is never less than an act of criminal nature. It was also mentioned in the said representation that the term 'fraud, forgery' and 'misconduct' are having entirely different and distinct meaning with each other. The above terms cannot be equated with the kind of misconducts as defined under para 19.5 or 19.6 of the Memorandum of Settlement dated 10.04.2002 on disciplinary matters. Therefore, investigation of fraud or forgery is absolutely outside the ambit and scope of the disciplinary rules and that cannot be held to be a good or valid ground for placing the worker under suspension.

12. The worker has also mentioned in the letter dated 07.10.08 that as a branch head it was his legal and official obligation to have lodged FIR with the police authorities soon after noticing the alleged fraud at the branch situate at Govind Nagar Kanpur without disclosing the name of the officers or staff remained posted at the branch. If it was done, the correct picture of the case would have been certainly come out after investigation by the authorities of police or CBI and in such situation the real culprit connected with the alleged fraud would have also been flashed and would have been produced before competent court of law their trial.

13. It is also alleged by the worker in reply to the show cause notice of the bank which is dated 10.10.08, that the worker vide application dated 19.10.08 demanded the documents from the branch relating to copy of report of preliminary investigation in the matter as alleged in the letter dated 27.08.08 of the Chief Manager, Govind Nagar Branch, Kanpur, and copy of memorandum, if any, issued by the bank to such officers or officials of Govind Nagar Branch, Kanpur, seeking their explanation in the matter together with their reply for misuse of their ID numbers and Pass words created by them.

14. It is also pleaded by the worker in his claim statement that he vide letter dated 02.01.09 clearly informed the bank / disciplinary authority that it is not known to the petitioner as to which authority is competent to act as disciplinary authority in his case either the Deputy General Manager and competent authority which has placed the petitioner under illegal suspension or the chief manager and the disciplinary authority which has issued show cause notice and charge sheet to the worker. Both the above authorities are not competent to act as such in view of provision of Para 14 of Memorandum of Bipartite Settlement inasmuch as they have never been nominated to act as an appellate authority or the disciplinary authority by name and designation.

15. The worker has also challenged the legality and propriety of the charge sheet, procedure adopted by the enquiry officer, inquiry findings, second show cause notice and the final order passed by the disciplinary authority dismissing the service of the worker from the bank.

16. In view of above it has been prayed by the worker that the impugned charge sheet dated 18.12.08 was exclusively the subject matter of investigation by outside agencies like CBI/Police or Economic Offence Wing in view of various circulars and vigilance manual of the bank and the bank was not competent to investigate the same taking it to be a case misconduct under service rules against the petitioner and this Hon'ble Tribunal be further pleased to hold the entire exercise in the name of disciplinary action and the impugned order of punishment dated 16.02.10 as absolutely without jurisdiction and is not sustainable in the eye of law and that this Hon'ble Tribunal be further pleased to grant the petitioner the relief of reinstatement with full back wages, seniority and all consequential benefits.

17. The worker along with his claim petition has filed entire documents pertaining to the disciplinary proceedings including show cause notice and final order passed in his case by the disciplinary authority.

18. The management has filed its reply but from the reply it is very much clear that the reply of the management is not specific but in a cursory manner to the effect that paras of the claim petition are matter on record need no reply. However it is alleged by the management that the worker was suspended vide order dated 11.06.08 by DGM and

competent authority of the bank, show cause notice dated 10.10.08 was issued by Chief Manager Allahabad Bank Zonal Office, the disciplinary authority and the reply to above show cause notice was given by the worker vide his letter dated 19.10.08. Being dissatisfied with the reply filed by the worker he was issued charge sheet dated on 18.12.08. A regular departmental inquiry was initiated against the worker for defrauding the bank of the sum of Rs.1177808/- by misusing the user ID of other officials at Govind Nagar Branch and the worker did not participate in the inquiry despite publication in the news papers and after recording the evidence of the management witnesses inquiry officer submitted his report whereupon the copy of the enquiry report was also provided to the worker with a show cause notice proposing the punishment of dismissal from the service of the bank upon the worker but the applicant did not submit any reply thereto. Thereafter the disciplinary authority passed its final order dated 16.02.10 dismissing the worker from the service of the bank.

19. In reply to para 50 of the claim petition of the worker it is alleged by the bank that other erring officials of the branch were also punished in the same matter and appropriate punishment has also been awarded to them. It is also pleaded by the bank that appropriate action for lodgment of FIR in the matter had been taken by the bank and on account of misappropriation of public money, the worker was found guilty of gross misconduct therefore, the bank has lost confidence reposed in him. Therefore, in view of the facts mentioned above the worker is not entitled for any relief.

20. No rejoinder has been filed by the worker in the case.

21. Worker has filed documents along with claim statement which are paper no. 14/34-322 which are proceedings of inquiry and rules and regulations of the bank and papers filed by the worker is from 14/34-163 and the same are admitted by the management's representative and the management has also filed documents relating to copies of inquiry proceedings and the documents relied upon by the enquiry officer which are paper no. 25/2-164.

22. I have heard the party's representative at length and have perused the records of the case carefully.

23. Two charges are given in the charge sheet which is paper no 14/57 and is dated 18.12.08. The charge sheet is discussed earlier in the claim part of the worker and the amount mentioned in the charge sheet was corrected vide corrigendum dated 13.05.09 and in charge no.1 amount Rs.248744/- was corrected as Rs.248921/- and in charge no.2, amount Rs.920064/- was corrected as 923500/- which are alleged to be fraudulently with drawn by the worker and third correction in the charge sheet was mentioned as the date 13.11.06 instead of 11.09.06 of the date of opening the saving bank account no.22577 and the copy of corrigendum was given to the worker.

24. It appears from the perusal of record that issue with regard to fairness of domestic inquiry was not framed because the worker representative has moved application paper no. 18/1 with the prayer that applicant concedes that no illegality has been committed by the enquiry officer and the procedure adopted by him is just and fair. It is further stated that the worker has attained the age of superannuation in Feb, 2012; therefore, he is not interested to contest the issue of fairness of inquiry.

25. On the basis of admission of worker inquiry was held to be just and fair by order dated 07.04.16 of the tribunal.

26. On perusal of inquiry proceedings it is clear that the worker has neither participated in the domestic inquiry nor had adduced any evidence to rebut the evidence of the management witnesses as examined in domestic inquiry.

27. Management has examined M.W.1 Sharad Tiwari, M.W.2 Rakesh Tiwari, .W.3 Anurag, M.W.4, R P Pandey, M.W.5 K. K. Saxena, M.W.6 B.S. Gaur, M.W.7 Smt. Asha Arora, M.W.8 A.N. Shukla, M.W.9 Anjali account holder, M.W. 10 Smt. Tara Account holder, M.W.11 S K Khatri, and M.W.12 Smt. S K Chawla in the domestic inquiry and also filed 72 documents which are mentione4d as ME-1 to ME-72.

28. As the worker has not made any cross examination of any of the 12 management witnesses produced in the inquiry, therefore, the evidence of these witnesses remained uncontroverted.

29. In the light of the facts and circumstances stated above, the tribunal now has to examine as to whether the enquiry officer was justified in submitting his findings proving all the charges against the worker or not and whether or not the enquiry officer has appreciated the evidence judiciously and according to the principles of natural justice.

30. Authorized representative for the bank has contended that the charges leveled against the worker regarding various transactions by way of transfer from OD accounts on different dates without any voucher in the account of account holder by misusing the user I.D of other officers and fraudulently withdrawing the amount mentioned in the charge sheet through withdrawal forms signed by the account holder on different dates.

31. As per contra the representative for the worker has contended that the worker cannot operate the computer systems unless he knows the pass word of the officer and official of the bank and the officers of the bank have denied in their evidence before the enquiry officer that at any point of time they had ever leaked their pass word to any of the officers or officials of the bank particularly to the delinquent employee Sri Raj Kapoor. As regards second part of the

charge of having fraudulently withdrawing the amount by the worker on several occasions by submitting withdrawal forms of account holder on which he had already obtained the signatures of the account holder on the reverse side of the withdrawal forms are concerned in this regard considering the rival contentions of the parties and also considering the evidence available on domestic inquiry file, the tribunal is of the opinion that the worker cannot be held solely responsible for misusing the pass word of other officials and officers of the branch and fraudulently with drawing the amount without connivance of other officials and officers of the branch.

32. As far as question regarding payment of amount through withdrawal forms is concerned, in this respect it is necessary to mention that the same would have been presented by the account holder themselves and if any official of the bank submits the withdrawal forms on several times for payment, such withdrawal forms should not have been passed by the concerned officer of the bank and payment thereof also should not have been made to worker in person.

33. The observation of the tribunal is also corroborated from the Preliminary investigation report dated 30.06.08 which is paper no. 17/2-4, wherein the investigating officer has disclosed several serious lapses that has been found to be made by Sri A N Shukla, paying cashier for making payment directly to the worker without making any query from the him and for not filling the names and other columns in the payment register, Smt. Sashi Kanta Chawla, clerk cum cashier, has committed lapses for not detecting the fraudulent activities that her user ID was used 25 times from 25.09.07 to 07.06.08.

34. Likewise Sri Sitaram Khatri, clerk cum cashier, Smt. Asha Arora, officiating special assistant, B.S. Gaur, clerk cum cashier, Sri S C Verma, special assistant, Sri R K Khanna, special assistant, are also found to have committed several serious lapses and also in the same fashion Sri R P Pandey, officer, Sri K K Saxena, Manager Operations, Sri U C Srivastava, Manager are also found to have authorized all the transactions except few in these two accounts.

35. It is also found by the investigating officer that these officers have committed lapses in not comparing the books on daily basis and further that they have failed in their duties allotted to them as comparing of transfer scroll which was entrusted to S K Saxena.

36. Besides this other lapses are also found which are-

1. No token book was in operation;
2. Comparing was not done;
3. Over dependence on an employee of all members of the branch;
4. Some system failure of soft ware
5. And lastly it has also been observed in the preliminary investigation report that the Chief Manager could not monitor the competence of system and procedure in the branch.

37. It is relevant to mention that it appears to be case of cyber crime and the management did not approach cyber cell or lodged any FIR in the matter.

38. It also reveals from the facts as mentioned in the preliminary investigation report, that other officials and officers of the bank such as manager including Chief Manager have also been held responsible to have committed several lapses which mean that they are jointly responsible for the alleged fraud.

39. It also appears that charge sheet were also given to these officers and officials by the bank and after receiving the replies Sri Umesh Srivastava, Manager Advances, Smt. Asha Arora, Smt. Sashi Kant Chawla, Smt. Ravinder Kaur and S.C. Verma were only cautioned on their lapses and Sri K K Saxena, Sri A. N. Shukla and R P Pandey were only given penalty of Censure which shows that their cases were dealt with leniency to the maximum.

40. The tribunal is also of the view that bank having found liability of almost all the officers of the bank in the alleged fraud as observed in the preliminary investigation report had not lodged any FIR in the matter with the police authorities with the motive to save the skin of all of these officers and officials of the branch otherwise police might have registered the case against all staff including the Branch Manager of the bank.

41. From over all evaluation of inquiry findings tribunal finds that the enquiry officer has given full opportunity to the worker to defend himself but worker did not avail such opportunity as a result of which inquiry was concluded ex-parte against the worker. As there is no direct evidence that the worker has misused the pass word of officers and officials of the branch in transferring the amount of interest accrued on matured FDRs to the account of the account holders and inquiry officer has considered this point on probabilities only.

42. Secondly from perusal of withdrawal forms filed by the bank relating to the alleged withdrawals, it is clear that on the reverse side of the withdrawal forms signature of the account holder appears and there appear no signature of worker Raj Kapoor in token of having received the amount. In the absence of this simply on the basis of oral evidence of management witnesses it is difficult to belief that th worker Raj Kapoor had received the amount in question.

43. As the worker did not cross examine any witness of the bank on facts and documentary evidence and did not produce any defense witness, therefore, the enquiry officer has correctly submitted the report against the worker by accepting oral as well as documentary evidence available before him. The tribunal also does not find any infirmity in the inquiry findings.

44. Now it has to be seen whether punishment of dismissal awarded to the worker is justified under the circumstances of the case as discussed above or the punishment of the worker is fit to be modified under section 11-A of the Industrial Disputes Act, 1947.

45. From the perusal of records of this case and charge sheet it appears that the bank has suffered financial loss of more than 11 lacs which was not realized either from the worker Sri Raj Kapoor or from any of the delinquent officers / employees of the branch for committing the lapses and negligence on their part for this financial loss.

46. It may also be pointed out here that the money lying with the bank is **PUBLIC MONEY** and the officers and the employees of the bank including the worker were the sole custodian of public money and in the event of financial loss to the bank happens, it is the liability of senior responsible officer of the bank to make good the financial loss suffered by the bank in public interest and the senior officers should have realized the money from the worker and other delinquent officers and officials of the branch to the extent of their negligence and fraud to restore public confidence in the bank.

47. The authorized representative for the bank could not be able to place any evidence to show that the responsible officers of the bank have made any sincere efforts to recover the financial loss suffered by the bank. Contrary to it, it is admitted by both the parties that the amount of full gratuity payable to worker was paid to the worker by the bank.

48. As the present case appears to be a case of joint liability of officers and officials of the branch for causing financial loss to the bank by allowing the credit unlawfully in the account of the account holders and thereafter allowing withdrawals of the amount mentioned in the charge sheet against rules and regulations without insisting the appearance of the account holder with their respective pass book at the time of making payment of the amount as has been observed by the Investigating Officer in its preliminary investigation report dated 30.06.08, which clearly establishes that a caucus of officers and the employees was in existence at the relevant time in the branch to commit fraudulent withdrawals and to save the skins of other senior officer of the branch and remaining other delinquent employees and no FIR was lodged with the police authority by the Zonal Head of the Bank nor the matter was referred to cyber crime cell and the management relying upon the preliminary investigation report has issued charge sheets to several officers and staff and except worker other officer and staff were only given the penalty of censure or letter of caution but worker Raj Kapoor was dismissed from the service of the bank. This does not appear to be fair on the part of the bank.

49. From the above circumstances of the case, it is apparently clear that it is a fit case in which tribunal is inclined to interfere with the punishment of the worker on the ground that the punishment of dismissal from the service of the bank awarded to the worker seems to be highly disproportionate as compared to the punishment awarded to the other delinquent officer and official of the branch of Govind Nagar, Kanpur.

50. As it has also been argued on behalf of Sri Raj Kapoor that he had already attained the age of superannuation in the month of February 2012, therefore, it will be in the interest of equity, justice and fair play that after exercising the powers as conferred upon the tribunal under section 11-A of the Industrial Disputes Act, 1947, the tribunal is inclined to interfere with the punishment awarded to the worker Sri Raj Kapoor and instead of dismissal according to the confirmed view of the tribunal Sri Raj Kapoor, is deemed to have been compulsorily retired from the service of the bank with pension and other superannuation benefits applicable under rules from the date of passing of the punishment order by disciplinary authority instead of dismissal from the service of the bank.

51. Accordingly the action of the management of Allahabad Bank in imposing the punishment of dismissal from the service of the bank on Sri Raj Kapoor vide order dated 16.02.10 is held to be neither just nor proper.

52. Therefore, it is held that the punishment awarded to Sri Raj Kapoor in the shape of dismissal from bank service is modified to the extent of compulsory retirement with pension and with superannuation benefits applicable under rules.

53. Reference is answered accordingly in favor of the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1980.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय बी.ई.एल. ऑप्ट्रोनिक डिवाइस लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी-2/89 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-14011/11/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1980.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Ref. No. CGIT-2/89 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the BEL Optronon Devices Limited and their workmen, which was received by the Central Government on 09.09.2016.

[No. L-14011/11/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** M.V. DESHPANDE, Presiding Officer**REFERENCE NO. CGIT-2/89 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF B.E.L. OPTRONIC DEVICES LTD.**

The Chief Executive Officer
BEL Optronon Devices Ltd.
EL-30, 'J' Block, MIDC
Pune 411 026.

AND**THEIR WORKMEN**

The President
BEL Optronon Devices Employees' Union
EL-30, J-Block
MIDC
Pune 411 026.

APPEARANCES:

FOR THE EMPLOYER : Mr. S. N. Desai, Advocate.

FOR THE UNION : Mr. Umesh Vishwad, Advocate.

Mumbai, dated the 22nd August, 2016.**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-14011/11/2014-IR (DU), dated 16.09.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of BEL Optronon Devices Ltd., Bhosari, Pune in signing the settlement on wage anomalies without discussion with the union is justified? If not, to what relief the union is entitled to?”

2. After receipt of the reference, both parties were served with notice. The reference was fixed for filing of Statement of Claim by the Union. In response to the notice, Second party union filed their Statement of Claim at Ex-7. First party Management resisted the Statement of claim by filing their Written Statement at Ex-9.

3. The matter was fixed for framing issues. Today second party Union filed application (Ex-11) along with affidavit in support for withdrawing the Reference. Representative (General Secretary) of the Second Party Union prayed to dispose of this Reference as they are not interested in pursuing it further. After hearing both parties on Ex-11, Orders were passed on Ex-11. As the Second Party Union does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 22.08.2016

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1981.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महानगर टेलीफोन निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी-2/104 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-40011/17/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1981.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Ref. No. CGIT-2/104 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Mahanagar Telephone Nigam Limited and their workmen, which was received by the Central Government on 09.09.2016.

[No. L-40011/17/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/104 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MAHANAGAR TELEPHONE NIGAM LTD.

The Executive Director
Mahanagar Telephone Nigam Ltd.
MTNL Telephone House, 15th floor
Veer Savarkar Marg
Dadar (W)
Mumbai 400 028.

AND

THEIR WORKMAN

The General Secretary
Mahanagar Telephone Nigam Karmachari Front
Parel Telephone Complex
Post Office Lane
Pare
Mumbai 400 012.

APPEARANCES:

FOR THE EMPLOYER : No appearance

FOR THE WORKMAN : No appearance

Mumbai, dated the 10th August, 2016.**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-40011/17/2014-IR (DU), dated 22.12.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the 5 points Charter of Demands of MTNL Karmachari Front, Mumbai against the management of MTNL, Mumbai as per Exhibit I enclosed is just and legal? IF so, what relief the workmen/ Union are entitled to?”

2. After receipt of the Reference, notices were issued to both the parties. Acknowledgement of notice served on the second party Union is at Ex-4. Matter was adjourned on several occasions for filing Statement of Claim by second party/ Union. Neither second party/ Union appeared before this Tribunal nor filed their statement of claim. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Thus I pass the following order:

ORDER

Reference stands dismissed for want of prosecution.

Date: 10.08.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1982.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑटोमोटिव रिसर्च एसोसिएशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी-2/90 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42012/127/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1982.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Ref. No. CGIT-2/90 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Automotive Research Association of India and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42012/127/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/90 of 2014

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF AUTOMOTIVE RESEARCH
ASSOCIATION OF INDIA**

The Director
Automotive Research Association of India
Vetal Tekdi

Off Paul Road
Kothrud
Pune 411 004.

AND

THEIR WORKMAN

Shri N.D. Dhumal
Rajendra Nagar PMC Chawl 2/94
Opp. Shankar Temple
Pune 411 030.

APPEARANCES:

FOR THE EMPLOYER : Mr. A.M. Jalisatgi, Advocate.

FOR THE WORKMAN : No appearance.

Mumbai, dated the 19th August, 2016.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/127/2014-IR (DU), dated 18.09.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the actions of the management of Automotive Research Association of India over the matter of alleged illegal termination of Shri N.D. Dhumal from services w.e.f. 20.04.2004 are legal and justified? If not to what relief the workman is entitled to?”

2. After receipt of the Reference, notices were issued to both the parties. Acknowledgement of notice served on the second party Workman is at Ex-4. On the first date of hearing, First party/ management filed Vakalatnama of Shri A.M. Jalisatgi. Second party workman also remained present and sought adjournment. Thereafter the matter was adjourned on several occasions for filing Statement of Claim by workman. Neither second party/ workman appeared before this Tribunal nor filed his statement of claim. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Thus I pass the following order:

ORDER

Reference stands dismissed for want of prosecution.

Date: 19.08.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचक्यू 61, सब एरिया कैंटीन ऑर्ग ए.पी.ओ. के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 10/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-14012/20/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1983.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 10/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the HQ 61, Sub-area Canteen Org. APO and their workman, which was received by the Central Government on 29.08.2016.

[No. L-14012/20/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No. 10 of 2016

Reference No. L-14012/20/2016/IR (DU) dated 21.07.2016

Sub-Maj. (Retd.) Balwant Singh S/o Sh. Zorawar Singh, VPO-Dewas,
Tehsil & Distt.-Mohindergarh, Haryana – 123034

...Workman

Versus

1. The Chairman, HQ 61, Sub-Area, Canteen Org/Cell, 56 A.P.O.

...Respondent

Appearances :

For the Workman : Sh. Satyander Kumar, advocate

For the Management : None

AWARD

Passed on 23-08-2016

Central Govt. vide No. L-14012/20/2016/IR (DU) dated 21.07.2016 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of HQ 61 Sub-Area, 56/APO in terminating the services of Sub-Maj. (Retd.) Balwant Singh S/o Zorawar Singh w.e.f. 11-09-2015 is just, valid and legal? If not then to what relief the workman is entitled for and from which date?”

2. Today the case was fixed for filing of claim statement by the workman. Shri Satyander Kumar representative of the workman moved an application for withdrawal of the reference on 9-8-2016 and today also made an endorsement on the order sheet that workman has authorised and instructed him to withdraw the reference with liberty to file afresh if needed. In view of the application and endorsement of the representative of the workman, the reference is returned as withdrawn with a liberty to file afresh if needed.

3. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.
23.08.2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1984.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी. डब्ल्यू.डी. करनाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 22/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/150/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1984.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 22/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the CPWD Karnal and their workman, which was received by the Central Government on 29.08.2016.

[No. L-42011/150/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH****Case No. ID No. 22 of 2015**

Reference No. L-42011/150/2015/IR (DU) dated 02.12.2015

Shri Jonny, S/o Sh. Balraj, through All Indian Central PWD (MRM)
Karamchari Sangathan, H.No.4823, Gali No.13, Balbir Nagar Extension,
Shahadara, Delhi-110032

...Workman

Versus

1. The Executive Engineer, Karnal Central Division,
Central Public Works Department, Karnal(Haryana) -132001

...Respondent

Appearances :

For the Workman : Workman in person alongwith Sh.Raj Kumar

For the Management : Shri G.C.Babbar, advocate

AWARD

Passed on 23-08-2016

Central Govt. vide No.L-42011/150/2015/IR(DU) dated 02.12.2015 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Central Public Works Department, in terminating the services of the workman Sh. Jonny S/o Balraj, sewer man is legal and justified? If not, what relief the workman is entitled to and from which date?”

2. Today the case was fixed for filing of written statement by the management. The workman appeared alongwith his representative Sh. Raj Kumar and filed application for withdrawal of the reference. The workman also made endorsement to this effect on order sheet. In view of the above, the reference is returned as withdrawn.

3. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.
23.08.2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1985.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अर्चेओलाजिकल सर्वे ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ सीआर सं. 08/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.09.2016 को प्राप्त हुआ था।

[सं. एल-42012/04/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1985.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. CR No. 08/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Archeological Survey of India and their workman, which was received by the Central Government on 14.09.2016.

[No. L-42012/04/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

DATED : 30th AUGUST, 2016

PRESENT : Shri V. S. RAVI, Presiding Officer**CR No. 08/2015****I Party**

Smt. Vijayalakshmi,
D/o Doraiswamy,
8th Ward, Garibhavi Colony,
Hospet Taluk,
Bellary -583221

II Party

The Superintending Archologist,
Archeological Survey of India,
5th Floor, Kendriya Sadan,
17th Main, Koramangala,
Bangalore -560034

AWARD

1. The Central Government vide Order No. L-42012/04/2015 – IR(DU) dated 23.02.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of Archaeological Survey of India, Kamalpur, Hampi, Sub-circle, Karnataka in terminating the services of Smt. Vijayalakshmi, of Kamalapur, is proper, legal & justified? If not, to what relief the said workman entitled to?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. Mr. Kumar Guru, Advocate and Additional Solicitor General Counsel filed memo of appearance for II party. I party called absent for the hearing on 08.04.2016. On 16.08.2016, once again notice for hearing, has been sent to I party by RPAD and also this Tribunal received served postal acknowledgment from Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. Unfortunately, the Ist party has failed to make appearance before this Tribunal. Further, in the present matter, the Ist party has been furnished with sufficient and adequate opportunities to make her submissions, in the present case. It is the settled law, that the particular matter has to be judged, in the light of its facts and circumstances of the said matter only. Already, reasonable opportunities have been granted to the Ist party to make her submissions. Therefore, it would be laying down the proposition, a little too broadly, to say that, even in an Award passed rejecting the Award for non-prosecution, it must be supported by elaborate reasons and details. After going through the material records, this Tribunal does not find any substance in the submission of the Ist Party. Further more it is seen that, the contentions of the Ist Party cannot be accepted for the above mentioned reasons also. Moreover, on the perusal of the material records, it can be very well said that the Ist Party is not interested to contest the present matter, on the question of fact and also on the question of law.

4. In the above mentioned circumstances, it would be very much clear in the present matter, that the Ist party has no interest to contest the present matter. It is for the Ist party to make out a case that she has a right to continue in service of management and that the management has done a mistake in discontinuing her services

5. Since no appearance has been made and also claim statement has not been filed and further, no case has been made out by Ist party and the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of Ist party in, not appearing before this Tribunal, despite due service of the notice, that too by way of RPAD and her conduct, in not filing claim statement, in support of the said reference, it is crystal clear that the Ist party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it has to be held the present reference has to be rejected, for non-prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following order

ORDER

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 30th August, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1986.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत हैवी इलेक्ट्रिकल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 56/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/56/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1986.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 56/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharath Heavy Electricals Limited and their workman, which was received by the Central Government on 31.08.2016.

[No. L-42011/56/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 29th day of July, 2016

INDUSTRIAL DISPUTE No. 56/2015

Between:

The General Secretary,
BHPV National Employees Union (Affiliated to INTUC)
Visakhapatnam

...Petitioner Union

AND

The Executive Director,
M/s Bharath Heavy Electricals Limited,
Heavy Plates and Vessels Plant,
Visakhapatnam (A.P.) 530012

...Respondent

Appearances:

For the Petitioner : Sri B. V. Rao, Authorised representative

For the Respondent : M/s. D. V. Subba Rao & D.V.S.S. Somayajulu, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-42011/56/2015-IR(DU) dated 18.6.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BHEL and their workman. The reference is,

SCHEDULE

“Whether the action of the management of M/s. Bharath Heavy Electricals Limited, Heavy Plates and Vessels Plant, Visakhapatnam in not considering the regularization of services of 1. Shri Badrinath Mishra and 2. Shri Abdesb Kumar working as casual workers since 1984 and 1995 respectively is legal and justified? If not to what relief they are entitled?”

The reference is numbered in this Tribunal as I.D. No.56/2015 and notices were issued to the parties concerned.

2. The workman filed his Claim Statement against the Respondent on 27.01.2016 and the matter was posted for counter of the Respondent/ Management.

3. Today i.e. on 29.07.2016 the Management counsel present and filed a memo stating that both parties have resolved their dispute through an Arbitration Award dated 21.01.2016 and a copy of the Arbitration Award is enclosed to the memo.

4. Petitioner also filed a memo with a prayer to permit to withdraw the present case as the matter was settled through Arbitration Award dated 21.01.2016 and respondent has informed the petitioner that it is accepting the directions as set out in page No. 11 and 12 of the said Award. It is further stated in the memo that Petitioner agreed to the Arbitration Award, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Shri J Vijaya Sarathi, Secretary to the Court, typed by him and corrected by me on this the 29th day of July, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1987.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत हैवी इलेक्ट्रिकल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 76/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/107/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1987.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 76/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharath Heavy Electricals Limited and their workman, which was received by the Central Government on 31.08.2016.

[No. L-42011/107/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 29th day of July, 2016

INDUSTRIAL DISPUTE I.D. No. 76/2015

Between:

The General Secretary,
BHPV National Employees Union (Affiliated to INTUC)
Visakhapatnam

...Petitioner

AND

The Executive Director,
M/s Bharath Heavy Electricals Limited,
Heavy Plates and Vessels Plant,
Visakhapatnam (A.P.) 530012

...Respondents

Appearances:

For the Petitioner : Sri B. V. Rao, Authorised Representative
For the Respondent : M/s. D. V. Subba Rao & D.V.S.S. Somayajulu, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 42011/107/2015-IR(DU) dated 11.9.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BHEL and their workman. The reference is

SCHEDULE

“Whether the action of the management of M/s Bharath Heavy Electricals Limited, Heavy Plates and Vessels Plant, Visakhapatnam in not considering the regularization of services of (1) Shri G Appala Naidu and 13 others working as casual workers since 1994 to 2000 is legal and justified? If not, to what relief they are entitled?”

The reference is numbered in this Tribunal as I.D. No.76/2015 and notices were issued to the parties concerned.

2. The workman filed his Claim Statement against the Respondent on 27.01.2016 and the matter was posted for counter of the Respondent /Management.

3. Today i.e., on 29.07.2016 the Management counsel is present and filed a memo stating that both parties have resolved their dispute through an Arbitration Award dated 21.01.2016 and a copy of the Arbitration Award is enclosed to the memo.

4. Petitioner also filed a memo with a prayer to permit to withdraw the present case as the matter was settled through Arbitration Award dated 21.01.2016 and respondent has informed the petitioner that it is accepting the directions as set out in page No. 11 and 12 of the said Award. It is further stated in the memo that Petitioner agreed to the Arbitration Award, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Shri J Vijaya Sarathi, Secretary to the Court, typed by him and corrected by me on this the 29th day of July, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1988.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत हैवी इलेक्ट्रिकल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 77/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/108/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 77/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharath Heavy Electricals Limited and their workman, which was received by the Central Government on 31.08.2016.

[No. L-42011/108/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 29th day of July, 2016**INDUSTRIAL DISPUTE I.D. No. 77/2015****Between:**

The General Secretary,
BHPV National Employees Union (Affiliated to INTUC)
Visakhapatnam

...Petitioner Union

AND

The Executive Director,
M/s Bharath Heavy Electricals Limited,
Heavy Plates and Vessels Plant,
Visakhapatnam (A.P.) 530012

...Respondent

Appearances:

For the Petitioner : Sri B. V. Rao, Authorised Representative

For the Respondent : M/s. D. V. Subba Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 42011/108/2015-IR(DU) dated 11.9.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of BHEL and their workman. The reference is

SCHEDULE

“Whether the action of the management of M/s Bharath Heavy Electricals Limited, Heavy Plates and Vessels Plant, Visakhapatnam in not considering the regularization of services of (1) N.V. Bhaskar Rao, (2) M. Gangadhara Rao, (3) Badarla Srinivas Rao, (4) Upendra Kumar Sha, (5) R. Deva Raj, (6) Dadi Govinda Rao and (7) Md. Shabir working as casual worker since 1986 to 2006 is legal and justified? If not to what relief they are entitled?”

The reference is numbered in this Tribunal as I.D. No.77/2015 and notices were issued to the parties concerned.

2. The workman filed his Claim Statement against the Respondent No.2 on 27.01.2016 and the matter was posted for counter of the Respondent/Management.
3. Today i.e. on 29.07.2016 the Management counsel is present and filed a memo stating that both parties have resolved their dispute through an Arbitration Award dated 21.01.2016 and a copy of the Arbitration Award is enclosed to the memo.
4. Petitioner also filed a memo with a prayer to permit to withdraw the present case as the matter was settled through Arbitration Award dated 21.01.2016 and respondent has informed the petitioner that it is accepting the directions as set out in page No. 11 and 12 of the said Award. It is further stated in the memo that Petitioner agreed to the Arbitration Award, which clearly indicates that the dispute between the parties have been resolved. Thus, the memo filed by the Petitioner to withdraw the dispute is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

Award is passed accordingly. Transmit.

Dictated to Shri J Vijaya Sarathi, Secretary to the Court, typed by him and corrected by me on this the 29th day of July, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंटेलिजेंस एफ.एस. ग्रुप के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 77/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1989.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 77/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Intelligency F.S. Group and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No.77/2014

Shri Anand Singh
S/o late Shri Govind Singh,
R/o S/170/187, Zharsa Gaon,
Delhi Cantt., Delhi-110 010

...Workman

Versus

The Commanding Officer,
No.1 Directorate of Headquarter,
Intelligence F.S. Group (M-1-25),
C/o Station Headquarter,
Delhi Cantt., Delhi-110 010

...Management

AWARD

Present dispute has been raised by the claimant, Shri Anand Singh, under Section 10(4) of the Industrial Disputes Act, 1947 (in short the Act). It is averred in the statement of claim that the workman herein was appointed by the management, Commanding Officer, Directorate of Headquarter, Intelligence FS Group on the post of Car Driver on 29.09.2004 at a monthly salary of Rs.7000.00. He worked continuously from 29.09.2004 till 07.08.2014 without any

break. He initially drove an Esteem bearing No.DL4 CG 4008 and at the time of his termination, he was driving a Honda CRV bearing No.DL 4C AB 4645 and both these vehicles taken by the Government but shown as private vehicle. Management issued temporary pass and visitor slip from time to time in his favour, due to the sensitive nature of job of the management. There were seven other drivers who were employed alongwith the workman. Due to the same treatment meted out to them, some of them have left and fresh engagements have been made in their place. The workman used to mark his attendance regularly from 29.09.2004 to 07.08.2013, in the register maintained by the management, thus rendering more than 8 years of unblemished service. On 08.08.2013, when the workman reported for duties, he was not allowed to join his duties and he was terminated without complying with Section 25F of the Act, leaving him and his family in destitution. He approached the management several times to take him back on the job but to no avail. Subsequently, he sent a legal notice through his counsel on 04.09.2013, to which no reply has been given by the management. He then approached the Assistant Labour Commissioner for conciliation of the matter but due to arbitrary and predetermined action of the management, no conciliation could be arrived at. The claimant projected that a period of 45 days stood expired from the date of his filing a claim statement/application before the Conciliation Officer, hence the claim statement was filed under the provisions of sub section (2) of section 2 of the Act. Finally, a prayer has been made to declare the termination as illegal and to reinstate him with all consequential benefits.

2. Written statement was filed by the management, taking various preliminary objections, i.e. management not being an industry, claim statement not being supported by affidavit etc. On merits, the management has averred that the workman was never in their employment, either as temporary or permanent employee, whatsoever. Temporary passes were issued to him to enable him to enter the cantonment area to carry out errands or as domestic help and drivers to the officers/staff in their personal capacity on need basis for specific period of time with intermittent long breaks. The workman's activities/nature of work had no relation with the management in any official capacity. Since the workman was never employed by the management, the question of his termination is simply falsification of facts. The workman was called by the officer concerned in his personal capacity and it is absurd that for any personal work of any official, the management is responsible. No salary slip or any official document has been filed by the workman to establish the relationship of master and servant between the parties. Mere production of any pass or visitor slip by the workman does not in any way improve any evidentiary value and the said claim has been filed with an intention to obtain wrongful gain. Hence, it is prayed that the claim, being devoid of merits, may be dismissed.

3. On the basis of the pleadings of the parties, following issues were framed vide order dated 13.01.2016:

- (i) Whether the petition is not maintainable in view of the preliminary objections of the management?
- (ii) Whether services of the workman herein were illegally terminated by the management on 07.08.2013, as alleged?

4. Thereafter, the reference was listed for evidence of the claimant. However, despite affording of three opportunities, neither the claimant nor any authorized representative on his behalf put in their appearance. It is, therefore, apparent that the claimant is no more interested in adjudication of the case on merits. Hence, this Tribunal is left with no other alternative but to pass a 'No dispute/claim' award. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

September 6, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1990.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचएनबी गढ़वाल सेंट्रल यूनिवर्सिटी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 94/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42011/47/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1990.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 94/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation

to the management of the HNB Garhwal Central University and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42011/47/2011-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI

Present : Shri Harbansh Kumar Saxena

ID.No. 94/2011

Km. Kamla Bhandari, D/o Shri. J.S. Bhandari,
C/o Shri Ramesh Chand Jain, Adv.
Sri Nagar, Distt., Pauri (UK),
Uttarakhand

...Workman

Versus

The Registrar,
HNB Garhwal Central University,
Sri Nagar Garhwal (UK),
Garhwal

...Management

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-42011/47/2011 -IR(DU) dated 10.10.2011 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of HNB Garhwal Central University, in terminating the services of workman Km. Kamla Bhandari D/o Sh. J.S Bhandari w.e.f. 30.10.2001, without complying with Section 25 F, G & H is legal and justified? What relief the workman is entitled to?”

On 11.11.2011 reference was received in this Tribunal. Which was register as I.D No. 94/11 and claimant was called upon to file claim statement with in fifteen days from date of service of notice.

After service of notice workman/claimant filed claim statement on 12.04.2012. Through which she prayed as follows:-

“It is , therefore, most respectfully prayed that the workman may kindly be reinstated with full back wages and continuity of service along with the benefits attached to her service under the law.

Any other relief which this Hon’ble Court deems fit and proper in the circumstances of the case may also be awarded to the workman in the interest of justice.

Previously case proceeded ex-parte against management and workman in support of her case filed her affidavit . Which was tendered on 2.05.2013 and marked as Exht. WW1/A. Alongwith this affidavit , she relied on letters dated 24.07.2001, 26.07.2001, copy of certificates dated 09.07.2001, 27.12.2008 and another certificate dated 27.12.2008 , joint representation submitted to the management, letter dated 10.05.2007, reply submitted by the management under Right to information Act, besides the documents supplied thereto, copy of letter dated 10.05.2007 sent by the management , copy of letter dated 13.09.2007 , letter dated 07.12.2001, representation dated 10.05.2007, letter dated 30.10.20152 and office orders issued by the Registrar, these documents are Exh. WW1/1 to Exh. WW1/37.

Management moved an application for setting aside order dated 17.12.2013. Which was allowed on 28.1.2014 and management was permitted to file written statement.

Against claim statement management filed written statement on 4.03.2014. Through which management prayed as follows:-

“ It is therefore, prayed that the Hon’ble Court may kindly dismiss the reference petition with costs.”

Against which workman filed rejoinder on 1.04.2014. Through which she re-affirmed the contents of claim statement.

On 6.5.2014 I framed following issues:-

1. Whether the action of the management of HNB Garhwal Central University, in terminating the services of workman Km. Kamla Bhandari D/o Sh. J.S Bhandari w.e.f. 30.10.2001, without complying with Section 25 F, G & H is legal and justified? If so its effect?
2. To what relief the workman is entitled to?

Workman again tendered her affidavit on 14.08.2014 . Her re-examination-in -chief is as follows:-

I tender my evidence by way of affidavit. My affidavit is Exht. WW1/B. I rely upon the documents WW1/1 to WW1/18.

On 26.05.2015 workman was partly cross-examined by Ld. A/R for the management. Her partly cross-examination is as follows:-

I was appointed in 1999.

I was appointed by the Registrar of the management.

It is on record.

My appointment was approved by Vice Chancellor.

I was appointed on regular post.

I was appointed on monthly salary basis.

My appointment was not on contractual basis.

On 29.01.2015 workman was further cross-examined and her further cross-examination is as follows:-

It is incorrect to suggest that I was temporary appointed.

I was regular appointee.

Appointment letter is on record.

No termination letter was communication to me.

When management orally refused to come inside the campus of management then I came to know that management is not wisher to continue my services in management.

I am unaware of the fact whether letters of termination are issued by registrar of University.

It is incorrect to suggest that I was legally appointed as appointment are not issued by University.

Management in support of its case filed affidavit of management witness and MW tendered his affidavit and he was cross- examined on same day i.e. on 15.3.2016. His statement of tendering of affidavit and cross-examination is as follows:

I tender my affidavit as evidence Exht. MW1/A. Which bears my signatures at point "A" .

XXXX:- By Sh. O.P. Sharma, Ld. A/R for the workman.

Registrar of University authorized me to give evidence in this Case.

Q. Whether the Vice Chancellor of the University has given the approval for the appointment of claimant?

Ans. In University appointing authority is registrar of University not Vice Chancellor.

Vol. Stated, In University registrar is appointing authority for non-teaching and Vice Chancellor for teaching staff.

Q. Whether appointment letter Exht. MW1/W1 was issued by the Vice Chancellor or University?

Ans. Yes.

Q. Whether the claimant continued to workman after initial appointment without any break?

A. I am not aware of this Fact.

Q. Whether the claimant has been working from June, 2001, continuously according to Exht. WW1/5?

A. As letter is not on letter pad. So it is not authentic it may be forged.

Q. Whether letter Exh.WW1 /7A, B & C which are on letter pad are genuine or not?

A. I do not know.

To Court:- Ans. Witness keeping mum.

Observation conduction of witness is that be suffering defect to support the management as he is employee of management.

Q. Whether the copy of to attendance under Exht. WW1/11A, WW1/11 B , , WW1/11 C, , WW1/11 D , WW1/11 E , WW1/11 F , WW1/11 G are supplied under R.T.I so her attendance in the register.

Ans. Documents are Genuine.

I am not aware of the fact that management has ever issued any notice, charge-sheet after any compensation at the time of her illegal termination.

I do not know whether any other employee was appointed on the post on which claimant was working.

Contents of para 16 of my affidavit are correct.

I am not aware of the fact whether at the time of appointment of other employee workman in the instance case is called for or not.

It is correct that salary of workman is drawn from Head of Physics Department.

It is incorrect to suggest after termination of workman other person were employee and no opportunity given to workman.

I am deposing falsely.

Management filed written arguments on 07.06.2016. Contents of written arguments are as follows:-

1. That the University was a state university upto 14 Jan 2009 and was upgraded as a Central University under the Central Universities Act 2009 w.e.f. 15.01.2009.
2. That that at the time of said up gradation of the university there were 171 contractual/daily wager employees, engaged by the Head of the Department/Project Incharge/Sectionals Heads of the university which are not the appointing authority nor any order of engagement/said appointments was ever issued by the university to the said daily wager/contractual employees. In the said list the name of the petitioners were not available. These petitioners were not engaged by the University.
3. That during the tenure of the State University, some of the departments may have engaged daily wagers without the approval of the Vice-Chancellor, the competent authority hence illegal and void ab initio.
4. That it is submitted the said daily wager/contractual labours may have been engaged for a period of one to three months showing some urgency of the section without following any provisions of law and with a view to provide a back door entry in the university.
5. That it is also worth mentioning here neither any permission or approval was ever obtained from the university for such illegal engagement nor the said engagement was ever extended with the permission or approval of the university but it seems that under some connivance with the officers of the university this category of employees were illegally provided the wages without any permission or approval from the university hence illegal and void ab initio.
6. That it is also worth mentioning here that none of these 171 contractual/daily rated employees were engaged against any substantive post.
7. That it is also worth mentioning here that the state govt. issued a Govt. order in the year 1998 sanctioning 418 post in the university clearly specify that no further engagement of daily wagers would be made in the university and as stated above these 171 daily wager/contractual labours were engaged by the project in charge or by the self finance departments and their payments were released from the self financing budget head of the department.
8. That six of them were removed but after a lapse of 4 to 6 years these persons were engaged in the department and yet again without any permission or approval from the university and these persons started claiming their seniority by including the period they were out of their engagement.
9. That out of the aforesaid 171 daily wager/contractual employees 5 were working on Group C post while there is a specific direction from the state that there shall be no engagement of daily wager in Group C. the details of engagements are mentioned below; Group- C- 45, Fourth Class- 85, and Sweeper- 41.

10. That while making the said illegal engagement the officials of the university have not cared to ensure the compliance of the reservation policy and the percentage of reservation is alarming.
11. That, presently, 37 posts are lying vacant in Group C including technical posts in the university and 104 Posts are lying vacant in Group D posts (now re-designated to MTS-Group C posts)
12. That these daily wager/contractual employees have paralyzed the functioning of the university by putting lock on the gates of the university (Talabandi) by proceeding on agitation, by resorting to proceed on a strike and they also extended threats to the university officers and are demanding their regularization.
13. That it is submitted that when the said fact of illegal engagement and back door entry in the service of the university was brought to the notice of the Hon'ble Court, the State Govt. constituted a committee by appointing Chief Development Officer Pauri namely Shri Dilip Jawalkar to enquire into the matter.
14. That the enquiry committee so constituted submitted a report to the State Govt. pointing out that the complaint in regard to the irregularities and illegalities in the appointments of Group C and D post are established and further recommended that the State Govt. may take decision fastening the liability in the matter.
15. That a writ petition No. 516 of 2009 (S/S) "Shambhu Prasad Chamoli V/s HNBGU and others" came up for consideration before the Hon'ble Court and the Hon'ble Court has been pleased to take cognizance of the report and was pleased to direct the university to re-consider the appointment made in the said writ petition keeping in view the report dated 21.04.2008.
16. That it is submitted that the present petitioners are also amongst those 187 daily wager/contractual employees who were engaged without any permission or approval of the university and by the authorities who are not the appointing authority as the power to appoint Group C and D Employees vests in the Registrar of the university and no one else. It is emphatically argued before this Hon'ble Court that none other and none of the petitioner's before the court has filed any valid/original appointment letter issued by the Registrar of the University and any other appointment letter by any other authority of the university is illegal and does not give any right or entitlement to any illegal appointee.
17. The matter of regularization was placed before the Executive Council of the University. The EC has decided considering the Supreme Court Judgment on Uma Devi Case there is no provision of regularization. Hence it is humbly argued before the Hon'ble Court that any regular re-appointment to the petitioner shall be in violation of the ratio laid down by the Hon'bel Supreme Court in State of Karnataka v Umadevi 2006 4 SCC 1.
18. That the petitioner was never legally appointed in the university weather on contract or on dailey wage or in any other capacity. In the light of such illegal appointment petitioner have no claim in any manner under Industrial Dispute Act. Petitioner cannot claim herself as a workman as she was never legally appointed in the university.
19. That the petitioner has not even arrayed the head of the department of the concerned department as a party who in collusion with the petitioner, illegelly allowed her to work in contractual capacity. University cannot be answerable for such illegal appointments and back door entries.
20. That the attendance register shown by the petitioner are can not be relied upon in the absence of valid legal appointment of the petitioner. Even as per the alleged attendance register, the alleged claimant was never a workman under Section 2 (s) of the Act neither claimant ever been into continuous service legally for not less than one year with the respondent institution hence the claimant was never a workman as defined under the Industrial Disputes Act nor the alleged retrenchment as alleged can be challenged under the Industrial Disputes Act as it was never a retrenchment as the ID Act. An Illegal appointment if terminated cannot be termed as retrenchment under the Industrial Disputes Act.
21. That in absence of any legal valid post on which the person is appointed there cannot be any legal right of the workman for asking to be appointed on that post. Post creation is purely executive function and there cannot be any regularization or compensation for a post which legally does not exist.

Petitioner's post was never in existence as regular post in the University neither tere is any such regular post today and in the absence of such regular post petitioner can not be continued in service. This position has already been laid down in the following Supreme Court Judgments

- (i) State of Maharashtra and another v. R.S. Bhonde and others: (2005) 6 SCC 751.
- (ii) Mahatma Phule Agricultural University and Ors. v. Nasik Zilla Sheth Kamgar Union and Ors. (2001 (7) SCC 346)
- (iii) Ahmadnagar Zilla Shetmajoor Union v. Dinkar Rao Kalyanrao Jagadale (2001 (7) SCC 356)

22. That under these circumstances it is expedient in the interest of justice that the Hon'ble Court may kindly dismiss the reference petition with costs.

Workman filed written arguments on 14.4.2016. Contents of written arguments are as follows:-

1. That the present statement of claim arises out of reference No. L-42011/51/2011-(IR(DU) forwarded by the learned Labour Commissioner (Central), Ministry of Labour, Govt. of India, Shram Shakti Bhawan, Delhi vide letter dated 10.10.2011 and the terms of the reference is as under:-

SCHEDULE

“WHETHER THE ACTION OF THE MANAGEMENT OF HNB GARHWAL CENTRAL UNIVERSITY, IN TERMINATING THE SERVICES OF THE WORKMAN MS. KAMLA BHANDARI DAUGHTER OF SHRI J.S. BHANDARI, W.E.F. 30.10.2001, WITHOUT COMPLYING WITH THE SECTION 25F, G & H IS LEGAL AND JUSTIFIED? WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

2. That the CLAIMANT was appointed as Clerk against the vacant post and with prior approval of the Vice Chancellor vide order dated 8.1.2001 in the department of physics at Birla Premises, Shri Nagar on the consolidated salary of Rs.3000/- per month.

3. That the CLAIMANT worked with all her honesty, diligence and sincerity till 31.10.2001, when her services were illegally terminated/retrenched as she was prevented to join her duty in the morning when she reported. During her tenure with the Management, the CLAIMANT had unblemished record.

4. That the Management has terminated/retrenched the services of the CLAIMANT illegally, without any just and sufficient cause or reason whatsoever in violation of the provisions of the laws. Even the basic principle of the natural justice was ignored.

5. That the CLAIMANT has worked continuously with the Management since her appointment dated 08.01.2001 till illegal termination/retrenchment of her services on 30/10/2001.

That the CLAIMANT was appointed as Clerk in physics department at Birla Premises, against the Permanent vacancy after the approval of the Vice Chancellor HNB Garhwal University Srinagar (Uttarakhand) on consolidated monthly salary of Rs.3000/-. As such the appointment of the CLAIMANT was made as Clerk against the Permanent Post lawfully with approval of competent authority. That at no point of time the CLAIMANT ever worked as daily wager or contractual worker. Her appointment was made against permanent post on regular basis and was not made for any fixed period or for any urgency, same was against permanent post and was not a back door entry.

That at the time of appointment of the CLAIMANT, the Management was governed by the State Government, as the University was enacted under State Statute at the relevant time. That along with the CLAIMANT, many other employees were also appointed on different posts and at different times on the same terms and conditions.

That on 30.10.2001 the management of the University has arbitrarily, without following the provisions of law and illegally terminated/retrenched the services of the CLAIMANT.

That the CLAIMANT aggrieved with the illegal act of the Management raised an Industrial Dispute under U.P.Industrial dispute Act before the learned Assistant Labour Commissioner/Conciliation Officer, Dehradun, than Uttaranchal.

That then the competent Govt. i.e. Govt. of Uttaranchal now Uttarakhand referred the Industrial dispute before the Labour Court Dehradun for adjudication vide order No.4837/Shramseva/631/Shram/2002 dated 24.10.2002 as CP No. 47/2003 before the labour court Dehradun vide letter dated 29.04.2003.

That the CLAIMANT preferred the statement of claim before the learned Presiding Officer, Labour Court, Dehradun wherein the Management also filed its written statement taking a false and vague defense which was untenable.

That during the pendency of the aforesaid Industrial Dispute and without following the provisions of law and arbitrarily reinstated some of the workmen whose services were illegally terminated/retrenched along with the CLAIMANT, vide order No. Admn/2007/1817 dated 1.9.2007 whereby seven such employees who had completed 240 days were reinstated on regular basis and the case of the CLAIMANT was not at all considered for the reasons best known to the Management. Even the juniors of the CLAIMANT were also re-instated; their cases were also pending before the Labour Court, Dehradun.

That during the proceedings before the learned Labour Court, when the dispute was at the advance stage, the Management filed an application alleging that it has now become the Central University w.e.f. 1.3.2009 and the Labour court has got no jurisdiction to try and decide the present industrial dispute and requested for dropping the proceedings/adjudication.

That he learned Labour Court Dehradun vide its order dated 12.10.2010 has dropped the proceedings pending before the Hon'ble Court on the ground that now the Management has become the Central University, so the court has now no jurisdiction and consigned the file to record room without answering the reference made by the State Government, though the act of the learned Labour Court in not deciding the reference was against law.

That thereafter, as directed the CLAIMANT raised the industrial Dispute before Assistant Labour Commissioner (Central)/Conciliation Officer, Dehradun for amicably resolving of the dispute between the CLAIMANT and the Management, but again the conciliation proceedings failed and the dispute was referred by the Conciliation Officer to the Competent Govt. /Central Govt. i.e. Secretary Labour, Govt. of India, referred the dispute with the above said terms of reference for adjudication to this Hon'ble Court.

6. That the service record of the CLAIMANT remained clear throughout and no notice or show-cause or charge sheet was ever served upon her, no enquiry / disciplinary proceedings whatsoever were ever initiated by the Management against the CLAIMANT at any point of time. That during her service with the Management and even thereafter, CLAIMANT never indulged in any illegal activities, strike or join any agitation or extend any threats to Management Officials or put locks on the main gate of the University. The CLAIMANT has completed 240 days in the preceding year as such the retrenchment of the CLAIMANT was made in violation of section 25F, G & H of I.D Act. No retrenchment compensation was offered or paid to the CLAIMANT at the time of her illegal termination/retrenchment from the services to her best knowledge the Management did not display of vacancies were arranged on notice board in the premises of University heaving details of those vacancies. No intimation of those vacancies were given by registered post to the CLAIMANT, as such CLAIMANT was deprived of her lawful benefits and violate the provisions of ID Act and Rules frame thereunder.

7. That the last drawn salary of the CLAIMANT was Rs. 3000/- per month and the same was being drawn by the Department from the main head of the Management/University and not from any self financing Budget Head of the department.

8. That in spite of the best efforts of the CLAIMANT she could not get any job or work, as such the CLAIMANT is unemployed since the date of her illegal termination/retrenchment and is surviving on the earning of other family members.

9. That the CLAIMANT has made various correspondence/requests/visits individually as well as jointly with other terminated / retrenched employees for her re-instatement on the service. CLAIMANT also wrote letters dated 31.10.2001, 3.12.2001 and 4.12.2001 to the above said effect but the Management did not care for the same. The Management also issued various certificates confirming the services of the CLAIMANT who has completed 240 days in the preceding year with management. Even otherwise the dispute of the CLAIMANT fully covered under the provisions of Industrial Dispute Act. 1947 specially the section 25G of the said Act. The Management has issued certificates dated 09.07.2007, 27.12.2008 & 27.12.2008.

10. That the CLAIMANT was never served with any notice, order or reason for the termination/retrenchment of her services nor CLAIMANT was offered any salary in lieu of the notice. That the CLAIMANT was not paid or offered any compensation at the time of illegal termination / retrenchment of her services which is alleged to have been retrenched under the garb of some cut out date.

11. That the Management never offered any re-employment to the CLAIMANT after her illegal termination/retrenchment, whereas in 2007 the Management re-employed various workmen on the similar category appointed on the same terms and conditions and their services were also illegally terminated/retrenched along with the CLAIMANT and their disputes were also pending before the Labour Court at Dehradun, but to the knowledge and documents supplied by the Management under RTI, the Management has reinstated many of such employees who were illegally terminated/retrenched and Junior to CLAIMANT against the provisions of Section 25-G of I.D.Act 1947 as well as the settled principle of law/rule *first come last go* and as such the Management has not acted fairly, which is crystal clear from the letter of Management dated 13.09.2007.

12. That the CLAIMANT, who is a citizen of India, was not given any opportunity by the Management to offer her re-employment or give preference to her, rather the Management employed many other employees, as such the act of the Management is totally in violation of provisions of Section 25F, G & H of the I.D.Act 1947 as the persons re-employed on the basis of pick and choose, who are Junior to the CLAIMANT and their re-employment was made even after 18th August, 1997. The CLAIMANT along with other similar workman made an representation before the Vice Chancellor of Management which was not considered.

13. That during pendency of aforesaid ID, Management did not filed written statement in spite of several opportunities and ultimately this Hon'ble Court was pleased to proceed Ex-parte vide order dt. 06/11/2012 and Ex-parte evidence of CLAIMANT was recorded as WW1 and matter was fixed for award. The predecessor Presiding Officer could not passed award due course when regular Presiding Officer was appointed and matter was put for

proceeding. During this period, Management filed an application for set-aside Ex-parte order 06/11/20012. This Hon'ble Court was pleased to set-aside the Ex-parte order with cost and Management was allowed to file W.S. W.S was filed on 04/03/2014 wherein following frivolous pleas were taken in defense.

14. That the Management university was state university till 14/01/2009 and was up-graded as central university and has submitted that at time of up-gradation there were 171, contractual / daily wages employs, engaged by the Head of Dept/ Project / Sections Head of university which was not appointed authority. In the said list the name of petitioners were not available. Management further stated that daily wages/ contractual labours may have been engaged for a period of one to three months showing some urgency of section, without following any provision of law and with a view to provide a back door entry in university.

The Management has stated in para(xi) of preliminary objection that presently , 37 posts are lying vacant in Group C including technical posts in the university and 104 posts in Group D posts (now redesigned to MTS- Group C posts).

The Management further submitted in his W.S para (xvi) of preliminary objection that the present petitioners are also amongst those 187 daily wages / contractual employees who were engaged without any permission or approval of the university and by the authorities who are not the appointed authority, as power to appoint Group C and D employees vests in the Registrar and on none other.

CLAIMANT filed replication and contradicts the contentions made by Management in their W.S and affirmed the contention of claim.

CLAIMANT entered in evidence box and examined herself as WW1 and filed his evidence by way of affidavit dt. 14/08/2014 as Exh. WW1/B. The CLAIMANT also proved documents exhibited as WW1/1 to 18 in her favour.

15. That various representation and demand of re-instatement was made by CLAIMANT individually as well as jointly and through union and those are exhibited as WW1/1 to WW1/3, WW1/8 & WW1/9, WW1/14 & WW1/17. The letter issued by Management the deptt, V.C and finance officer is Exh. WW1/5 & WW1/6 and service certificates dt. 09/07/2007, 27/12/2008 and 27/02/2008 which are Exh. WW1/7 (colly). During pendency of ID CLAIMANT sought various documents and relevant information through the process of RTI, application filed under RTI are exhibits WW1/10. Under RTI the Management supplied various records/copy of the attendance register which are exhibit WW1/11 (colly), WW1/12 and WW1/13(colly).

To prove her case, the Claimant/ Workman examine herself as WW1 and adduce her evidence by way of affidavit which is Exhibits as WW1/A & WW1/B. Management also examine one Sh. Suraj Kumar Prasad as MW1 and filed evidence by way of affidavit. Management relied nor filed any document, as such no document was proved. Even Management has not rebutted the claim of Workman / Claimant.

Issue No. 1

Admittedly Claimant was appointing on 08/01/2001 as clerk, in this deptt of Physics at Birla Premise of Sri Nagar Garhwal of the Management. Fact has been duly proved by the appointment letter MW1/W1. The V.C is Supreme Authority in Management University and appointment on his approval is proper and made by higher authority, same admitted in his cross examination by MW1. The submission of Management that Registrar is appointing authority has no substance to challenge the appointment order MW1/W1. The Management witness MW1 has admitted the documents WW1/11A, 11, C to G as genuine, which clearly stated that Claimant has worked continuously and only on monthly wages. Last drawn salary was Rs 3000/- Exh WW1/11 clearly evident that Claimant was paid monthly salary and has worked till 30/10/2001.

Salary slips of various months clearing showing wages paid and period or numbers of days Claimant worked in particular months.

Admittedly the services of claimant was terminated illegally without assigning any reason as such fully covered under the head "RETRENCHMENT" as provided in section 2(oo) of ID Act, the services of Claimant was not terminated as punishment inflicted by way of disciplinary action nor falls under any provision (a) to (c) as given in section 2(oo). Thus it attracts the provision of section 25F of ID Act. From the documents as well the evidence of Management, it clearly establishes that the Workman has worked continue and fixed wages were paid on monthly basis, as such question of daily wages or contractual service does not arise. No document or evidence was adduce by Management in this respect, which clearly show that her services of regular nature and not temporary. Salary slips/attendance register are exhibited as WW1/11(colly) and service certificate as WW1/7(colly). Only attendance forms showing attendance of daily wages, does not in way change Claimant status of regular appointment on monthly wages.

To attract provision of section 25F of ID Act, conditions precedent are calculating 240 days in preceding year to ascertained it, one had to move back ward to a period of 12 months just preceding the date of termination/retrrenchment

and ascertain whether the Workman had rendered service for a period of 240 days. Admitted the service rendered by Claimant is continue without any break and completed 365 days in preceding year.

On this point Claimant relied on case title 1986 Lab IC 98 where Hon'ble **"Apex Court held" Sundays and other paid holidays should be taken into account for purpose of reckoning the total number of days on which the workman could be said to be have actual worked.** The continuous service has been clearly define in Section 25 B and more particularly sub Section 2(a)(ii).

Services of Claimant was neither as daily wages nor casual, Claimant wages were fixed, revised and paid on monthly basis, as such case attracts provision of Section 25F of ID Act, being retrenched without complying the provision of law and law of natural justice violated. No compensation was paid or offered to Claimant at time of illegal termination. Admittedly claimant is citizen of India and is or was not offered any re-employment at any point of time, no required notice\ call to re-employed was served on Claimant, as mandatory required Section 25 (H) and (G) of ID Act. It is well settled proposition that

"First come last go" was also totally ignored. The documents Exh WW 1/1, WW1/3 clearly established that Claimant has been requesting for re-employment and further vide document Exh WW1/4, WW1/7 and WW1/10 Claimant proved that Management has re-employed some of similarly placed workman who were junior to Claimant. Thus Management has violated the provision of Section 25 (G) & (H) of ID Act. No mandatory provisions were followed and claimant was deprived of the benefit of which she was legally entitled. It is further established that vacancy were existing and were of permanent nature, because Management has made various appointment during pending of present dispute including on post on which Claimant was working.

Claimant relied on the judgment titled as 208(2014) DLT 44 where in the Hon'ble Delhi High Court has held" Deleting the name of respondent and retaining juniors and co-workers would conclusively prove violation of Section 25 (G) & (H) of ID Act".

That the Apex Court in the judgment cited as Central Bank of India Vs S.Stayam &ors (1996)5 SSC 419, in which the Apex Court has held that **The plain language of Section 25-H speaks only of re-employment of retrenched workmen. The ordinary meaning of the expression 'retrenched workmen' must relate to the wide meaning of 'retrenchment' given in section 2(o). Section 25- F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workmen.... who has been in continuous service for not less than year". Section 25-G prescribes the principle of retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service not less than one year, covered by Section 25-F.**

Section 25-H is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workmen in the matter of re-employment over other person. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workmen. Chapter V-A, in which Section 25-H occurs, provides for retrenchment and is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict the application of Section 25- H therein only to one category of retrenched workmen.

In another case cited as I (2010) SLT 448 case title Harginder Singh Vs Punjab State Warehousing Corp. where in Apex Court held as **Applicability of Section 25 G- Workman not required to prove that he had worked for a period of 240 days during twelve calendar months preceding termination of his service- It is sufficient for him to plead and prove that while effecting retrenchment, employer violated rule of 'last come first go' without any tangible reason.**

On this point, citation relied upon by the Management are not applicable in the present case because Uma Devi case is of 2005 whereas the service of claimant were terminated in 2001 and no re- employment made even, after the said judgment case of Mahatam Phule Agricultural University is in respect of daily wages, whereas in the present case claimant were employment on regular monthly wages. The case of R.S Bhonde was on seasonal work, whereas is present case claimant work for regularly and continuously not as seasonal or casual work.

The Management has miserably failed to produce evidence to show that while terminating services of Claimant it complied with the requirement of Section 25G ID Act or has offered any compensation, or served any notice or issue any chargesheet or leveled any allegation of misconduct. Management further failed to prove that while employing or making appointment of the post held by Claimant has adhere to settled law or mandatory requirement. Hence issue No. 1 be likely to be decided in favour of Claimant.

Issue No. 2

Admittedly the Claimant has stated in his claim that she is unemployed since her illegal termination and also proved the same in her evidence, in para 8 wherein has specifically stated **that inspite of the best efforts she could not get any job or work, as such she is unemployed since the date of her illegal termination and is surviving on the earning of other family members. Ans same has been reiterated in her evidence affidavit WW1/B, in para 19.**

And this fact remain unchallenged, as Management has neither put up question on claimant in her cross examination nor give any rebuttal in their evidence. The Apex Court has held in the case cited has (2005) 2 SSC 363 Burden of proof- Held, initial burden is on employee- He has to show that he was not gainfully employed- It is thereafter that the employer can bring on record materials to rebut the claim of employee.

The Apex Court in the further held in the case title P.G.I of medical education research Vs Raj Kumar cited as 1(2001) 2 SSC 54, wherein it was held that **"Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be envolved, though, however, there is statutory sanction to direct payment of back wages in its entirety".**

The aforesaid finding was again reiterated in "Hindustan Motors Ltd Vs Tapan Kumar Bhattacharya cited as 2 (2002) 6 SSC 41 and in another case titled as Indian Railway Construction Co. Ltd. Vs Ajay Kumar cited as 3 (2003) 4 SSC 579.

Hence this issue stands to in favour of the claimant and claimant is entitled **full back wages.**

On the facts and circumstances stated above the workman/Claimant is entitled for re-instatement from the date illegal termination with full back wages along with all consequential benefits.

As such the present reference may kindly be decided in favour of Claimant and against the Management.

It is relevant to mention here that in case of Municipal Committee Karnal Vs. Ramesh Chand & Ors. 2016 L.L.R. P. 513. Hon'ble High Court of Punjab & Haryana High Court laid down following principle:-

"If there is non-compliance of S. 25-F ID. Act i.e. retrenchment compensation has not been provided to workman then termination of workman shall be illegal because he has completed 240 days service in a calendar year." Hence workman is entitled for reinstatement with full back wages.

In case of PathanKot Vehicleleades Pvt Ltd. Vs. P.O. Industrial Tribunal, Gurdaspur & anrs. 2016 L.L.R 461 Lordship of Punjab & Haryana High Court held that reinstatement appropriate when termination is violative of I.D Act.

In case of H.D. Singh Vs. R.B.I 1985 S.C.C (L &S) 975 their Lordship of Hon'ble Supreme Court held that adverse inference appropriate when employer fails to produce attendance /wages register and other service record.

On the basis of aforesaid settled law of Hon'ble Supreme Court , Lordship of Hon'ble Delhi High Court in case of **Bright Export Ltd. Vs. Central Board of Trustees E.P.F organization 2016 L.L.R P. 487.** Specified that burden lies on party who pleads as per provisions of S.103 Indian Evidence Act.

Their Lordship of Delhi High Court further held that since it is within the special knowledge of the employer that a particular employee is employed with him or not hence burden lies on him to produce attendance register/wages register or any other service record.

When case was proceeding ex-parte against management. Then workman in support of her case filed her affidavit which was tendered on 2.05.2013 as Exht. WW1/A. Alongwith this affidavit , she relied on letters dated 24.07.2001, 26.07.2001, copy of certificates dated 09.07.2001, 27.12.2008 and another certificate dated 27.12.2008 , joint representation submitted to the management, letter dated 10.05.2007, reply submitted by the management under Right to information Act, besides the documents supplied thereto, copy of letter dated 10.05.2007 sent by the management , copy of letter dated 13.09.2007 , letter dated 07.12.2001, representation dated 10.05.2007, letter dated 30.10.20152 and office orders issued by the Registrar, these documents are Exh. WW1/1 to Exh. WW1/37.

It is relevant to mention here that aforesaid documents have not been challenged by management during its cross-examination with WW1.

Moreover they have already been proved by workman through her evidence. In addition to it these documents are documents on record of this case so judicial notice in respect of those documents can be taken u/s 56 of Indian Evidence Act.

Which is accordingly taken and these papers are being treated as documentary evidence of workman.

No ruling in reply by management in support of its case has been cited by Ld. A/R for the management.

Moreover there is sufficient required evidence of workman which comes within category of reliable and credible evidence .

Workman has completed 240 days service in each calendar year. So she shall be deemed to be in continuous in service under the employer as per provision of section 25-B(2) (A) (ii) ID. Act .

Hence she is entitled to be reinstatement with full back wages in the light of principle laid down in the aforesaid rulings.

In these circumstances this Tribunal is of considered view that issue no. 1 framed by me is liable to be decided in favour of workman and against management on the basis of reliable and credible evidence of workman supported with settled law of Hon'ble Supreme Court and other Hon'ble High Courts. Which is accordingly decided and management is required to be directed to reinstate the workman with full back wages since her termination i.e. 30.10.2001.

Reference is liable to be decided in favour of workman and against management. Which is accordingly decided and claim statement is allowed.

Management is directed to reinstate the workman with full back wages since her termination i.e. 30.10.2001 within two months after expiry of period of available remedy against this Award.

Award is accordingly passed.

Dated : 26.08.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1991.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचएनबी गढ़वाल सेंट्रल यूनिवर्सिटी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 96/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42011/49/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 96/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the HNB Garhwal Central University and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42011/49/2011-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, ROOM NO. 33,
BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA,
DELHI 110 032**

Present : Shri Harbansh Kumar Saxena

ID.No. 96/2011

Smt.Godambari Devi , W/o Sh. Devi Prasad,
Kaushalya Niwas, Kedar Mohalla,
Kamleshwar, Sri Nagar, Pauri Garhwal,
Garhwal(UK)

...Workman

Versus

The Registrar,
HNB Garhwal Central University,
Sri Nagar Garhwal (UK),
Garhwal

...Management

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-42011/49/2011(IR)(DU) dated 10.10.2011 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of HNB Garhwal Central University, in terminating the services of workman Smt. Godambari W/o Devi Prasad w.e.f 11.10.2001 , without complying with Section 25 F, G, & H is legal and justified? What relief the workman is entitled to”

On 11.11.2011 reference was received in this Tribunal. Which was register as I.D No. 96/11 and claimant was called upon to file claim statement with in fifteen days from date of service of notice.

After service of notice workman/claimant filed claim statement on 12.04.2012. Through which she prayed as follows:-

“It is , therefore, most respectfully prayed that the workman may kindly be reinstated with full back wages and continuity of service along with the benefits attached to her service under the law.

Any other relief which this Hon’ble Court deems fit and proper in the circumstances of the case may also be awarded to the workman in the interest of justice.

Previously case proceeded ex-parte against management and workman in support of her case filed her affidavit. Which was tendered on 2.05.2013 and marked as Exht. WW1/A. Alongwith this affidavit , she rely on letters of the claimant addressed to Vice Chancellor, reply submitted by the management under Right to Information Act, letter dated 02.07.2009 , list of employees, letter dated 18.03.2009 , attendance sheets, letter dated 13.04.2007, another letter dated 13.04.2007, letter dated 13.01.2007, letter dated 16.04.2007 , letter dated 29.05.2007, letter dated 01.03..2007 , another list of employees, letter dated 07.12.2001, letter dated 02.07.2002, letter dated 06.01.1998 , letter dated 30.12.1997 , joint representation of employees, office order dated 04.10.1999 , letter date 15.12.2008 , letter dated 15.07.2007 , These documents have been marked as Exht. WW1/1 to Ex. WW1/42. Management moved application for setting aside order dated 17.11.2012. Which was allowed on 28.1.2014 and management was permitted to file written statement.

Against claim statement management filed written statement on 4.3.2014. Through which management prayed as follows:-

“It is therefore, prayed that the Hon’ble Court may kindly dismiss the reference petition with costs.”

Against which workman filed rejoinder on 1.04.2014. Through which she re-affirmed the contents of claim statement.

On 6.5.2014 I framed following issues:-

1. Whether the action of the management of HNB Garhwal Central University, in terminating the services of workman Smt. Godambari, W/o Sh. Devi Prasad, w.e.f. 11.10.2001, without complying with Section 25 F, G & H is legal and justified? If so its effect?

2. To what relief the workman is entitled to?

Workman again tendered her affidavit on 14.08.2014 . Her re-examination-in –chief is as follows:-

I tender my evidence by way of affidavit. My affidavit is Exht. WW1/B. I rely upon the documents WW1/1 to WW1/18.

On 26.05.2015 workman was cross-examined by Ld. A/R for the management. Her cross-examination is as follows:-

I was appointed in October 1999.

I was appointed on the post of Chowkidar.

The appointment letter was issued by Sh. Shaklani.

Sh. Shaklani was the Vice Chancellor of management at that time.

I do not know whether post was sanctioned or not.

I do not know whether my post was published or not.

I came to know for vacancy through Mr.Rana.

I was posted in Alakh Nanda Hospital. Mr. Rana, who told me about the post was Chief Warden.

I was appointed on the basis of monthly pay.

If I filed register of attendance for daily wages than I can assign no reason for filing such document.

I do not know the date of my termination.

I was terminated about 15 years ago.

I was orally terminated .

I was informed through persons in office.

Management in support of its case filed affidavit of management witness and MW tendered his affidavit and he was cross- examined on same day i.e. on 15.3.2016. His statement of tendering of affidavit and cross-examination is as follows:

I tender my affidavit as evidence Exh. MW1/A. Which bears my signatures at point “A” .

XXXX:- By Sh. O.P. Sharma, Ld. A/R for the workman.

Registrar of University authorized me to give evidence in this Case.

Q. Whether the Vice Chancellor of the University has given the approval for the appointment of claimant?

Ans. In University appointing authority is registrar of University not Vice Chancellor.

Vol. Stated, In University registrar is appointing authority for non-teaching and Vice Chancellor for teaching staff.

Q. Whether appointment letter. Exht. MW1/W1 was issued by the Vice Chancellor or University?

Ans. Yes.

Q. Whether the claimant continued to workman after initial appointment without any break?

A. I am not aware of this Fact.

Q. Whether the claimant has been working from June, 2001, continuously according to Exh. WW1/5?

A. As letter is not on letter pad. So it is not authentic it may be forged.

Q. Whether letter Exh. WW1 /7A, B & C which are on letter pad are genuine or not?

A. I do not know.

To Court:- Ans. Witness keeping mum.

Observation conduction of witness is that be suffering defect to support the management as he is employee of management.

Q. Whether the copy of to attendance under Exh. WW1/11A, WW1/11 B , , WW1/11 C , , WW1/11 D , WW1/11 E , WW1/11 F , WW1/11 G are supplied under R.T.I so her attendance in the register.

Ans. Documents are Genuine.

I am not aware of the fact that management has ever issued any notice, charge-sheet after any compensation at the time of her illegal termination.

I do not know whether any other employee was appointed on the post on which claimant was working.

Contents of para 16 of my affidavit are correct.

I am not aware of the fact whether at the time of appointment of other employee workman in the instance case is called for or not.

It is correct that salary of workman is drawn from Head of Physics Department.

It is incorrect to suggest after termination of workman other person were employee and no opportunity given to workman.

I am deposing falsely.

Management filed written arguments on 07.06.2016. Contents of written arguments are as follows:-

1. That the University was a state university upto 14 Jan 2009 and was upgraded as a Central University under the Central Universities Act 2009 w.e.f. 15.01.2009.

2. That that at the time of said up gradation of the university there were 171 contractual/daily wage employees, engaged by the Head of the Department/Project Incharge/Sectionals Heads of the university which are not the appointing authority nor any order of engagement/said appointments was ever issued by the university to the said daily wage/contractual employees. In the said list the name of the petitioners were not available. These petitioners were not engaged by the University.

3. That during the tenure of the State University, some of the departments may have engaged daily wagers without the approval of the Vice-Chancellor, the competent authority hence illegal and void ab initio.

4. That it is submitted the said daily wage/contractual labours may have been engaged for a period of one to three months showing some urgency of the section without following any provisions of law and with a view to provide a back door entry in the university.

5. That it is also worth mentioning here neither any permission or approval was ever obtained from the university for such illegal engagement nor the said engagement was ever extended with the permission or approval of the university but it seems that under some connivance with the officers of the university this category of employees were illegally provided the wages without any permission or approval from the university hence illegal and void ab initio.

6. That it is also worth mentioning here that none of these 171 contractual/daily rated employees were engaged against any substantive post.

7. That it is also worth mentioning here that the state govt. issued a Govt. order in the year 1998 sanctioning 418 post in the university clearly specify that no further engagement of daily wagers would be made in the university and as stated above these 171 daily wage/contractual labours were engaged by the project in charge or by the self finance departments and their payments were released from the self financing budget head of the department.

8. That six of them were removed but after a lapse of 4 to 6 years these persons were engaged in the department and yet again without any permission or approval from the university and these persons started claiming their seniority by including the period they were out of their engagement.

9. That out of the aforesaid 171 daily wage/contractual employees 5 were working on Group C post while there is a specific direction from the state that there shall be no engagement of daily wage in Group C. the details of engagements are mentioned below; Group- C- 45, Fourth Class- 85, and Sweeper- 41.

10. That while making the said illegal engagement the officials of the university have not cared to ensure the compliance of the reservation policy and the percentage of reservation is alarming.

11. That, presently, 37 posts are lying vacant in Group C including technical posts in the university and 104 Posts are lying vacant in Group D posts (now re-designated to MTS-Group C posts)

12. That these daily wage/contractual employees have paralyzed the functioning of the university by putting lock on the gates of the university (Talabandi) by proceeding on agitation, by resorting to proceed on a strike and they also extended threats to the university officers and are demanding their regularization.

13. That it is submitted that when the said fact of illegal engagement and back door entry in the service of the university was brought to the notice of the Hon'ble Court, the state govt. constituted a committee by appointing Chief Development Officer Pauri namely Shri DilipJawalkar to enquire into the matter.

14. That the enquiry committee so constituted submitted a report to the state govt. pointing out that the complaint in regard to the irregularities and illegalities in the appointments of Group C and D post are established and further recommended that the state govt. may take decision fastening the liability in the matter.

15. That a writ petition no. 516 of 2009 (S/S) "Shambhu Prasad Chamoli V/s HNBGU and others" came up for consideration before the Hon'ble Court and the Hon'ble Court has been pleased to take cognizance of the report and was pleased to direct the university to re-consider the appointment made in the said writ petition keeping in view the report dated 21.04.2008.

16. That it is submitted that the present petitioners are also amongst those 187 daily wage/contractual employees who were engaged without any permission or approval of the university and by the authorities who are not the appointing authority as the power to appoint Group C and D Employees vests in the Registrar of the university and no one else. **It is emphatically argued before this Hon'ble Court that none other and none of the petitioner's before the court has filed any valid/original appointment letter issued by the Registrar of the University and any other appointment letter by any other authority of the university is illegal and does not give any right or entitlement to any illegal appointee.**

17. The matter of regularization was placed before the Executive Council of the University. The EC has decided considering the Supreme Court Judgment on Uma Devi Case there is no provision of regularization. **Hence it is humbly argued before the Hon'ble Court that any regular re-appointment to the petitioner shall be in violation of the ratio laid down by the Hon'ble Supreme Court in State of Karnataka v Umadevi 2006 4 SCC 1.**

18. **That the petitioner was never legally appointed in the university whether on contract or on daily wage or in any other capacity. In the light of such illegal appointment petitioner have no claim in any manner under Industrial Dispute Act. Petitioner cannot claim herself as a workman as she was never legally appointed in the university.**

19. **That the petitioner has not even arrayed the head of the department of the concerned department as a party who in collusion with the petitioner, illegally allowed her to work in contractual capacity. University cannot be answerable for such illegal appointments and back door entries.**

20. That the attendance register shown by the petitioner can not be relied upon in the absence of valid legal appointment of the petitioner. **Even as per the alleged attendance register, the alleged claimant was never a workman under Section 2 (s) of the Act neither claimant ever been into continuous service legally for not less than one year with the respondent institution hence the claimant was never a workman as defined under the Industrial Disputes Act nor the alleged retrenchment as alleged can be challenged under the Industrial Disputes Act as it was never a retrenchment as the ID Act. An Illegal appointment if terminated cannot be termed as retrenchment under the Industrial Disputes Act.**

21. **That in absence of any legal valid post on which the person is appointed there cannot be any legal right of the workman for asking to be appointed on that post. Post creation is purely executive function and there cannot be any regularization or compensation for a post which legally does not exist.**

Petitioner's post was never in existence as regular post in the University neither there is any such regular post today and in the absence of such regular post petitioner can not be continued in service. This position has already been laid down in the following Supreme Court Judgments

- (i) State of Maharashtra and another v. R.S. Bhonde and others: (2005) 6 SCC 751.
- (ii) Mahatma Phule Agricultural University and Ors. v. Nasik Zilla Sheth Kamgar Union and Ors. (2001 (7) SCC 346)
- (iii) Ahmadnagar Zilla Shetmajoor Union v. Dinkar Rao Kalyanrao Jagadale (2001 (7) SCC 356)

22. That under these circumstances it is expedient in the interest of justice that the Hon'ble Court may kindly dismiss the reference petition with costs.

Workman filed written arguments on 14.06.2016 . Contents of written arguments are as follows:-

That the present statement of claim arises out of reference No. L-42011/51/2011-(IR(DU) forwarded by the learned Labour Commissioner (Central), Ministry of Labour, Govt. of India, Shram Shakti Bhawan, Delhi vide letter dated 10.10.2011 and the terms of the reference is as under:-

SCHEDULE

“WHETHER THE ACTION OF THE MANAGEMENT OF HNB GARHWAL CENTRAL UNIVERSITY, IN TERMINATING THE SERVICES OF THE WORKMAN SMT. GODAMBARI DEVI WIFE OF SHRI DEVI PRASAD, W.E.F. 11.10.2001, WITHOUT COMPLYING WITH THE SECTION 25F, G & H IS LEGAL AND JUSTIFIED? WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

That the Claimant was appointed as Chowkidar against the vacant post and with prior approval of the Vice Chancellor, vide order dated 4.10.1999 of Chief Superintendent of Hostel, at Sri Nagar Birla, Girls Hostel, on the consolidated salary of Rs.1400/- per month.

That the Claimant worked with, all her honesty, diligence and sincerity till 11.10.2001, when her service was illegally terminated/retrenched as she was prevented to join her duty in the morning on next day, when she reported for duty. During her tenure with the Management the Claimant had unblemished record.

That the Management has terminated/retrenched the services of the Claimant illegally, without any just and sufficient cause or reason whatsoever in violation of the provisions of the laws. Even the basic principles of natural justice were ignored.

That the Claimant has worked continuously with the Management since her appointment dated 4.10.1999 till illegal termination/retrenchment of her services. The appointment of the Claimant was made as Chowkidar against the

Permanent Post lawfully with the approval of competent authority. At no point of time the Claimant ever worked as daily wager or contractual worker. Her appointment was made against permanent post on regular basis and was not made for any fixed period or for any urgency, same was against permanent post and as such was not a back door entry. At the time of appointment of the Claimant, the Management was governed by the State Government, as the University was enacted under State Statute at the relevant time. Along with the Claimant, many other employees were also appointed on different posts and at different times on the same terms and conditions. On 11.10.2001 the management of the University has arbitrarily, without following the provisions of law and illegally terminated/retrenched the services of the Claimant.

That the Claimant aggrieved with the illegal act of the Management raised an Industrial Dispute under U.P. Industrial dispute Act before the learned Assistant Labour Commissioner/Conciliation Officer, Dehradun, then Uttaranchal. The Ld Assistant Labour Commissioner held the conciliation Proceedings and tried to resolve the dispute, but conciliation proceedings failed due to the adamant attitude of the Management, thereby the Conciliation Officer has sent the failure report to the Competent Govt. i.e. the Govt. of Uttaranchal now known as Uttarakhand. The competent Govt. i.e. Govt. of Uttaranchal / Uttarakhand referred the Industrial dispute before the Labour Court Dehradun for adjudication vide order No.1180-84 MRIR-1(ref) dated 14.2.2003.

That the Claimant preferred the statement of claim before the Ld Presiding Officer, Labour Court, Dehradun wherein the Management also filed its written statement taking a false and vague defence which was untenable. During the pendency of the aforesaid Industrial Dispute and without following the provisions of law and arbitrarily reinstated some of the workmen whose services were also illegally terminated/retrenched along with the Claimant. Vide order No. Admn/2007/1817 dated 1.9.2007 wherein seven such employees who had completed 240 days were reinstated on regular basis and the case of the Claimant was not at all considered for the reasons best known to the Management. Even the juniors of the Claimant were also re-instated, their cases were also pending before the Labour Court, Dehradun.

That during the proceedings before the Hon'ble Labour Court, when the dispute was at the advance stage, the Management filed an application alleging that it has now become the Central University w.e.f. 1.3.2009 and the Labour court has got no jurisdiction to try and decide the present industrial dispute and requested for dropping the proceedings/adjudication. The Hon'ble Labour Court Dehradun vide its order dated 12.10.2010 has dropped the proceedings on the ground that now the Management has become the Central Government, so the court has now no jurisdiction and consign the file to record room, without answering the reference made by the State Government. Though the act of the Hon'ble Labour Court in not deciding the reference was against law.

That thereafter, as directed, the Claimant raised the industrial Dispute before Assistant Labour Commissioner (Central)/Conciliation Officer, Dehradun for amicably resolving of the dispute between the Claimant and the Management, but again the conciliation proceedings failed and the dispute was referred by the Conciliation Officer to the Competent Govt. i.e. Central Govt. Secretary Labour, Govt. of India, referred the dispute with the above said terms of reference for adjudication to this Hon'ble court.

That the service record of the Claimant remained clear throughout and no notice or show cause or charge sheet was ever served upon her, no enquiry/disciplinary proceedings whatsoever were ever initiated by the Management against the Claimant at any point of time. That during her service with the Management and even thereafter, Claimant, never indulged in any illegal activities, strike or join any agitation or extend any threats to the Management Officials or put locks on the main gate of the University as alleged. The Claimant has completed 240 days in the preceding year, as such the retrenchment / termination of the Claimant was made in violation of section 25 F, G and H of ID Act. No retrenchment compensation was offered or paid to the Claimant at the time of her illegal termination / retrenchment from the services. To her best knowledge the Management neither display of vacancies nor arranged on notice board in the premises of the University, having details of those vacancies. No intimation of those vacancies were given by registered post to the Claimant, as such, Claimant was deprived of her lawful and mandatory requirement and also violate the provisions of ID Act and Rules framed there under.

That the last drawn salary of the Claimant was Rs. 1400/- per month and later revised to Rs 2500/- and the same was being drawn by the Department from the main head of the Management/University and not from any self financing Budget Head of the department. That inspite of the best efforts of the Claimant, she could not get any job or work, as such the Claimant is unemployed since the date of her illegal termination/retrenchment and is surviving on the earning of other family members.

That the Claimant made various correspondence/requests/visits individually as well as jointly with other terminated/retrenched employees for her re-instatement on the service. She also wrote letters dated 31.10.2001, 3.12.2001 and 4.12.2001 to the above said effect but the Management did not care for the same. The Claimant along with the other employees who have been illegally terminated/retrenched by the Management, made a written representation to the Hon'ble Chief Minister of State of Uttaranchal now known as Uttarakhand and on the said

representation the Ld Secretary of the Chief Minister, vide its letter dated 7.12.2001 directed the Registrar of the Management to maintain the earlier condition of their appointment and the payment of their dues be made immediately and inform the said office about the consideration on the representation of the said employees, but the Management did not care for the same and has neither reinstated the Claimant nor made the payment of the dues so far or consider the Claimant representation.

That the act of the Management is totally illegal, unlawful, malafide, against the provisions of the I.D.ACT/U.P.Industrial Act and the principles of natural justice in violation of section 25F, 25G AND 25H of ID Act. The Claimant has worked continuously without any break with the Management since her joining the service till 11.10.2001, the date of illegal termination/retrrenched and this fact is substantiated by the records of the Management, the copy of which was supplied to the Claimant under RTI application.

That the Management failed to adhere to the provisions laid down under the I.D. Act as well as U.P. Industrial Act, as the Management/University has made the appointments of various employees thereafter on pick and chose basis i.e. after the illegal termination / retrrenchment of the Claimant and other similar workmen of same category of the post of the Claimant. It is pertinent to submit that at no point of time there was any agreement arrived between the Claimant or the Union and the Management for re-employment as provided in Section 25-G of the I.D.ACT.

That the Management never offered any re-employment to the Claimant after her illegal termination/retrrenchment, whereas in 2007 the Management re-employed various workmen of the similar category, appointed on the same terms and conditions and their services were also illegally terminated/retrrenched along with the Claimant and their disputes were also pending before the Labour Court at Dehradun, but to the knowledge of Claimant and documents supplied by the Management under RTI, the Management has re-instated many of such employees who were illegally terminated/retrrenched and were Junior to Claimant in violation of provisions of Section 25-G of I.D.Act 1947 as well as the settled principle of law/rule *first come last go* and as such the Management has not acted fairly and has illegally terminated/retrrenched services of Claimant. The Claimant, is a citizen of India, was not given any opportunity by the Management to offer Claimant for re-employment/re-instatement or give preference to Claimant for which she is legally entitled as Claimant have preference over the others, rather the Management employed many other employees, as such the act of the Management is totally in violation of provisions of Section 25-G of the I.D.Act 1947 as the persons re-employed on the basis of pick and choose, who are Junior to the Claimant and their re-employment was made even after 18th August, 1997. The Claimant along with other similarly placed workman made an representation before the Vice Chancellor of Management which was not considered.

That during pendency of aforesaid ID, Management did not filed written statement in spite of several opportunities and ultimately this Hon'ble Court was pleased to proceed Ex-parte vide order dt. 06/11/2012 and Ex-parte evidence of CLAIMANT was recorded as WW1 and matter was fixed for award. The predecessor Presiding Officer could not passed award and in due course the regular Presiding Officer was appointed and matter was put for proceeding. On fresh notice, Management filed an application for set-aside Ex-parte order 06/11/2012. This Hon'ble Court was pleased to set-aside the Ex-parte order with cost and Management was allowed to file W.S. W.S was filed on 04/03/2014 wherein following frivolous pleas were taken in defence.

That the Management university was state university till 14/01/2009 and was up- graded as central university and has submitted that at time of up-gradation there were 171, contractual / daily wages employs, engaged by the Head of Deptt/ Project / Sections Head of university which was not appointed authority. In the said list the name of petitioners were not available. Management further stated that daily wages/ contractual labours may have been engaged for a period of one to three months showing some urgency of section, without following any provision of law and with a view to provide a back door entry in university.

The Management has stated in para(xi) of preliminary objection that presently , 37 posts are lying vacant in Group C including technical posts in the university and 104 posts in Group D posts (now redesigned to MTS- Group C posts).

The Management further submitted in his W.S para (xvi) of preliminary objection that the present petitioners are also amongst those 187 daily wages / contractual employees who were engaged without any permission or approval of the university and by the authorities who are not the appointed authority, as power to appoint Group C and D employees vests in the Registrar and on none other.

CLAIMANT filed replication and contradicts the contentions made by Management in their W.S and affirmed the contention of claim.

CLAIMANT entered in evidence box and examined herself as WW1 and adduces evidence by way of affidavit as Exh. WW1/B. The CLAIMANT also proved documents exhibited as WW1/1 to 18 in her favour.

On pleadings of the parties, Hon'ble Court was pleased to frame following issues:-

Whether the action of Management of HNB G. Central University, in 1.terminating the services of Workman Smt. Godambri Devi W/O Sh. Devi Prasad w.e.f 11.10.2001 without complying with section 25 F, G & H is legal and justified? If so its effect?

2. To what relief the Workman is entitled? If so what relief?

The prove her case, Workman /Claimant filed her evidence by way of affidavit Exh. WW1/A to WW1/B and also proved documents Exhibit WW1/1 to WW1/18. Management also examine one Sh. Suraj Kumar Prasad as MW1 by way his affidavit Exh MW 1/A, and has not relied or filed any document in support of his case. Admittedly the Workman was appointed as Chowkidar vide appointment letter dt 04/10/1999, Exh. MW1/W1. Same has been admitted by the Management witness MW1 in his Cross Examination.

To prove her case, the Claimant/ Workman examine herself as WW1 and adduce her evidence by way of affidavit which is Exhibits as WW1/A & WW1/B. Management also examine one Sh. Suraj Kumar Prasad as MW1 and filed evidence by way of affidavit Management relied nor filed any document so no document was proved. Even Management has not rebutted the claim of Workman / Claimant.

Issues No.1

The Claimant was appointed on 04/10/1999, as Chowkidar at Girls Hostel, by Hostel Sup dt vide appointment letter dt 04/09/1999 Exhibit MW1/W1. Admittedly the appointment of claimant was made for 89 days, but being permanent post and vacant, was continue till illegal termination dt 11/10/2001. That the service was continue, without any break and on monthly wages, which were increased from Rs 1400/- month to Rs 2500/- month w.e.f Nov. 2000. These facts are proved vide documents Exh. WW1/6 (colly) & also Exhibit as WW1/6-18 Salary slips of various months clearing showing wages paid and period or numbers of days Claimant worked in particular months.

Admittedly the services of claimant was terminated illegally without assigning any reason as such fully covered under the head "RETRENCHMENT" as provided in section 2(oo) of ID Act, the services of Claimant was not terminated as punishment inflicted by way of disciplinary action nor falls under any provision (a) to (c) as given in section 2(oo). Thus it attracts the provision of section 25F of ID Act. From the documents as well the evidence of Management, it clearly establishes that the Workman has worked continue and fixed wages were paid on monthly basis, as such question of daily wages or contractual service does not arise. No document or evidence was adduce by Management in this respect. Salary of Workman was revised from Rs 1400/- month to Rs 2500/- month in month of Nov. 2000, so which clearly show that her services of regular nature and not temporary. Salary slips of Nov. 2000 is Exhibited as Exh WW1/6 (colly). Only attendance forms showing attendance of daily wages, does not in way change Claimant status of regular appointment on monthly wages.

To attract provision of section 25F of ID Act, conditions precedent are calculating 240 days in preceding year to ascertained it, one had to move back ward to a period of 12 months just preceding the date of termination/retrrenchment and ascertain whether the Workman had rendered service for a period of 240 days. Admitted the service rendered by Claimant is continue without any break and completed 365 days in preceding year.

On this point Claimant relied on case title 1986 Lab IC 98 where Hon'ble "**Apex Court held**" **Sundays and other paid holidays should be taken into account for purpose of reckoning the total number of days on which the workman could be said to be have actual worked.** The continuous service has been clearly define in Section 25 B and more particularly Sub-Section 2(a)(ii).

Services of Claimant was neither as daily wages nor casual, Claimant wages were fixed, revised and paid on monthly basis, as such case attracts provision of Section 25F of ID Act, being retrenched without complying the provision of law and law of natural justice violated. No compensation was paid or offered to Claimant at time of illegal termination. Admittedly claimant is citizen of India and is or was not offered any re-employment at any point of time, no required notice\ call to re-employed was served on Claimant, as mandatory required Section 25 (H) and (G) of ID Act. It is well settled proposition that "First come last go" was also totally ignored. The documents Exh WW 1/1, WW1/3 clearly established that Claimant has been requesting for re-employment and further vide document Exh WW1/4, WW1/7 and WW1/10 Claimant proved that Management has re-employed some of similarly placed workman who were junior to Claimant. Thus Management has violated the provision of Section 25 (G) & (H) of ID Act. No mandatory provisions were followed and claimant was deprived of the benefit of which she was legally entitled. It is further established that vacancy were existing and were of permanent nature, because Management has made various appointment during pending of present dispute including on post on which Claimant was working.

Claimant relied on the judgment titled as 208(2014) DLT 44 where in the Hon'ble Delhi High Court has held "Deleting the name of respondent and retaining juniors and co-workers would conclusively prove violation of Section 25 (G) & (H) of ID Act".

That the Apex Court in the judgement cited as Central Bank of India Vs S. Stayam & ors (1996) 5 SSC 419, in which the Apex Court has held that **The plain language of Section 25-H speaks only of re-employment of retrenched workmen. The ordinary meaning of the expression 'retrenched workmen' must relate to the wide meaning of 'retrenchment' given in section 2(oo). Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workmen.... who has been in continuous service for not less than year". Section 25-G prescribes the principle of retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service not less than one year, covered by Section 25-F.**

Section 25-H is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other person. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman. Chapter V-A, in which Section 25-H occurs, provides for retrenchment and is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict the application of Section 25-H therein only to one category of retrenched workmen.

In another case cited as I (2010) SLT 448 case title Harginder Singh Vs Punjab State Warehousing Corp. where in Apex Court held as **Applicability of Section 25 G- Workman not required to prove that he had worked for a period of 240 days during twelve calendar months preceding termination of his service- It is sufficient for him to plead and prove that while effecting retrenchment, employer violated rule of 'last come first go' without any tangible reason.**

On this point, citation relied upon by the Management are not applicable in the present case because Uma Devi case is of 2005 whereas the service of claimant were terminated in 2001 and no re-employment made even, after the said judgement case of Mahatam Phule Agricultural University is in respect of daily wages, whereas in the present case claimant were employment on regular monthly wages. The case of R.S Bhonde was on seasonal work, whereas is present case claimant work for regularly and continuously not as seasonal or casual work.

The Management has miserably failed to produce evidence to show that while terminating services of Claimant it complied with the requirement of Section 25G ID Act or has offered any compensation, or served any notice or issued any charge sheet or leveled any allegation of misconduct. Management further failed to prove that while employing or making appointment of the post held by Claimant has adhere to settled law or mandatory requirement. Hence issue No. 1 be likely to be decided in favour of Claimant.

Issue No. 2

Admittedly the Claimant has stated in his claim that she is unemployed since her illegal termination and also proved the same in her evidence, in para 8 wherein has specifically stated **that in spite of the best efforts she could not get any job or work, as such she is unemployed since the date of her illegal termination and is surviving on the earning of other family members. Ans same has been reiterated in her evidence affidavit WW1/B, in para 19.**

And this fact remain unchallenged, as Management has neither put up question on claimant in her cross-examination nor give any rebuttal in their evidence. The Apex Court has held in the case cited as (2005) 2 SSC 363 Burden of proof- Held, initial burden is on employee- He has to show that he was not gainfully employed- It is thereafter that the employer can bring on record materials to rebut the claim of employee.

The Apex Court in the further held in the case title P.G.I of medical education research Vs Raj Kumar cited as 1(2001) 2 SSC 54, wherein it was held that **"Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety".**

The aforesaid finding was again reiterated in **"Hindustan Motors Ltd Vs Tapan Kumar Bhattacharya cited as 2 (2002) 6 SSC 41 and in another case titled as Indian Railway Construction Co. Ltd. Vs Ajay Kumar cited as 3 (2003) 4 SSC 579.**

Hence this issue stands to in favour of the claimant and claimant is entitled **full back wages.**

On the facts and circumstances stated above the workman/Claimant is entitled for re-instatement from the date illegal termination with full back wages along with all consequential benefits.

As such the present reference may kindly be decided in favour of Claimant and against the Management.

It is relevant to mention here that in case of Municipal Committee Karnal Vs. Ramesh Chand & Ors. 2016 L.L.R. P. 513. Hon'ble High Court of Punjab & Haryana High Court laid down following principle:-

"If there is non-compliance of S. 25-F ID. Act i.e. retrenchment compensation has not been provided to workman then termination of workman shall be illegal because he has completed 240 days service in a calendar year." Hence workman is entitled for reinstatement with full back wages.

In case of PathanKot Vehicleleads Pvt Ltd. Vs. P.O. Industrial Tribunal, Gurdaspur & anrs. 2016 L.L.R 461 Lordship of Punjab & Haryana High Court held that reinstatement appropriate when termination is violative of I.D Act.

In case of **H.D. Singh Vs. R.B.I 1985 S.C.C (L &S) 975** their Lordship of Hon'ble Supreme Court held that **adverse inference appropriate when employer fails to produce attendance /wages register and other service record.**

On the basis of aforesaid settled law of Hon'ble Supreme Court , Lordship of Hon'ble Delhi High Court in case of **Bright Export Ltd. Vs. Central Board of Trustees E.P.F organization 2016 L.L.R P. 487.** Specified that burden lies on party who pleads as per provisions of S.103 Indian Evidence Act.

Their Lordship of Delhi High Court further held that since it is within the special knowledge of the employer that a particular employee is employed with him or not hence burden lies on him to produce attendance register/wages register or any other service record.

When case was proceeded ex-parte against management then workman in support of her case filed her affidavit which was tendered on 2.05.2013 as Exht. WW1/A alongwith this affidavit she placed reliance on letters of the claimant addressed to Vice Chancellor, reply submitted by the management under Right to Information Act, letter dated 02.07.2009 , list of employees, letter dated 18.03.2009 , attendance sheets, letter dated 13.04.2007, another letter dated 13.04.2007, letter dated 13.01.2007, letter dated 16.04.2007 , letter dated 29.05.2007, letter dated 01.03..2007 , another list of employees, letter dated 07.12.2001, letter dated 02.07.2002, letter dated 06.01.1998 , letter dated 30.12.1997 , joint representation of employees, office order dated 04.10.1999 , letter date15.12.2008 , letter dated 15.07.2007 ,These documents have been marked as Exht. WW1/1 to Ex. WW1/42.

It is relevant to mention here that aforesaid documents have not been challenged by management during its cross-examination with WW1.

Moreover they have already been proved by workman through her evidence. In addition to it these documents are documents on record of this case so judicial notice in respect of those documents can be taken u/s 56 of Indian Evidence Act.

Which is accordingly taken and these papers are being treated as documentary evidence of workman.

No ruling in reply by management in support of its case has been cited by Ld. A/R for the management.

Moreover there is sufficient required evidence of workman which comes within category of reliable and credible evidence.

Workman has completed 240 days service in each calendar year. So she shall be deemed to be in continuous in service under the employer as per provision of section 25-B(2) (A) (ii) ID. Act .

Hence she is entitled to be reinstatement with full back wages in the light of principle laid down in the aforesaid rulings.

In these circumstances this Tribunal is of considered view that issue No. 1 framed by me is liable to be decided in favour of workman and against management on the basis of reliable and credible evidence of workman supported with settled law of Hon'ble Supreme Court and other Hon'ble High Courts. Which is accordingly decided and management is required to be directed to reinstate the workman with full back wages since her termination i.e. 11.10.2001.

Reference is liable to be decided in favour of workman and against management. Which is accordingly decided and claim statement is allowed.

Management is directed to reinstate the workman with full back wages since her termination i.e. 11.10.2001 within two months after expiry of period of available remedy against this Award.

Award is accordingly passed.

Dated : 26.08.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2016

का.आ. 1992.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारती एयरटेल सर्विसेज लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 30/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-40012/32/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th September, 2016

S.O. 1992.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 30/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharti Airtel Service Ltd. and their workman, which was received by the Central Government on 09.09.2016.

[No. L-40012/32/2010-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, ROOM NO. 33,
BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA,
DELHI 110 032**

Present : Shri Harbansh Kumar Saxena**ID. No. 30/10**

Sh. Ajay Vilas & Others C/o
All India General Mazdoor Trade Union,
170, Bal Mukund Khand Giri, Kalkaji,
New Delhi.

Versus

Manager /Director ,
M/s Bharti Airtel Services Ltd. .
Corporate Centre, Neelgagan, Mandi Road,
Sultanpur, Mahrauli,
New Delhi-110030.

AWARD

The Central Government in the Ministry of Labour Vide Letter No. L-40012/32/2010-IR(DU)) dated 10.09.2010 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the demand of the All India General Mazdoor Trade Union (Regd.)New Delhi for reinstatement of 21 workers (Annexure –A & B) with back wages and all consequential benefits , is fair and legal? If yes, what reliefs the workmen are entitled to ?

On 24.09.2010 reference was received in this Tribunal. Which was register as I.D No.30/10 and claimant was called upon to file claim statement with in fifteen days from date of service of notice.

Workman/claimant Sh. Sher Bahadur Rai, appeared after service of notice and filed his claim statement on 2.09.2011. On the basis of contents of claim statement Sh. Sher Bahadur Rai, prayed for the arrear of salary, bonus , arrear of annual leaves, and full back wages alongwith his reinstatement etc.

Against claim statement management filed written statement on 17.01.2012.Through which it prayed as follows:-

“As regards the prayer , as made by the claimant in his statement of claim, the management while relying upon the contents of the above preliminary objections and parawise reply to the statement of claim reiterates that there is no justification in the averments , allegations , claim or demand of the claimant. Hence he is not entitled for any relief of reinstatement with back wages. The statement of claim, as filed is unsustainable and liable to be dismissed.

Against which workman filed rejoinder on 26.3.2012. Where-in he reaffirmed the contents of claim statement.

On 5.06.2010 My Ld. Predecessor on the basis of pleading of parties framed following three issues:-

1. Whether claimant accepted full and final amount of settlement from the management and left services of the management of his own?

2. As in terms of reference.

Workman Sh. Sher Bahadur Rai, in support of his case produces himself as WW1.

Management in support of its case produce MW1 Sh. Mahesh Kumar Gupta.

I have heard the Ld. A/R for the parties and perused the pleadings of workman Sh. Sher Bahadur Rai, as well as management including evidence of workman Sh. Sher Bahadur Rai and management. Perusal of reference order makes it crystal clear that case of 21 workmen was referred for adjudication to this Tribunal. Out of 21 workman, 20 workman namely Sh. Vivek Sharma, Sunil Kumar, Naresh Kumar, Sharad Kumar, Praveen Kumar, Vinod Kumar Sharma, Kuldeep Singh, Ram Samuj, Jitender Verma, Mohd. Masroor Alam, Joginder Singh, Amit Kumar Yadav, Mohd. Wahid Khan, Bharat Sharma, Mohd. Imtiaz Ahmed, Harish Kumar, Ramesh Chand Tripathi, Brijesh Kumar, Ajay Vilas, Rajesh Kumar Chandan have neither filed claim statement nor adduced evidence. So questions of determination mentioned in schedule of reference are liable to be decided against workman and in favour of management. Which are accordingly decided.

Now I am dealing with the case of workman Sh. Sher Bahadur Rai who filed his claim statement and adduced his evidence. My Ld. Predecessor on 5.6.2013 framed following issues:-

Issue No. 1:- Whether claimant accepted full and final amount of settlement from the management and left the services of the management of his own?

Issue No. 2:- As in terms of reference.

My Issue wise finding are as follows:-

Finding On Issue No. 1. Which is as follows:-

“Whether claimant accepted full and final amount of settlement from the management and left the services of the management of his own?”

Although burden to prove issue No. 1 lies on management but workman Sh. Sher Bahadur produce himself as WW1 and denied the facts of acceptance of full and final amount of alleged settlement from the management and left the services of management of his own.

Moreover alleged amount of Rs. 7371.25 /- is too meager in the alleged circumstances of the case to discharge its burden by management.

Management examine MW1 Sh. Mahesh Kumar Gupta, who tendered the affidavit Exht. MW1/a. on 21.09.2015.

He admitted in his cross-examination that workman Sh. Sher Bahadur Rai is working in management since last 4 years. When it was asked from him “when workman was employed”.

He could reply that it is a matter of record. Which can be answered after searching the documents. Documents could not be perused today. But after such reply of MW1 was directed to come for cross-examination on next date after perusal of record relating to workman.

Hence his cross-examination is deferred to 21.09.2015.

On 14.12.2015 MW1 was further cross-examined then he stated that workman Sh. Sher Bahadur Rai tendered resignation by his own freewill. Witness seen court file that no resignation letter on record. On this count Ld. A/R for the workman suggested to witness that workman never tendered his resignation. He also admitted that management is not ready to take workman back on duty.

He also admitted that finance department of management has deposited the amount full and final in the account of workman Sh. Sher Bahadur Rai.

On which following suggestions were given to MW1:-

No.1:- It is wrong to suggest that workman not taken the dues from the management.

It is further wrong to suggest that management terminated the services of workman w.e.f. 1.09.2009.

While workman Sh. Sher Bahadur Rai specifically pleaded and proved that he never tendered his resignation and received full and final payment from the management.

Moreover non-production of resignation of workman will raise adverse inference against management under section 114(g) Indian Evidence Act. Which is accordingly drawn and it is presumed that no resignation was given by workman Sh. Sher Bahadur Rai.

Rulings cited on behalf of management are in-applicable in the instant case due to distinguishable facts.

On the basis of aforesaid discussion I am of considered view that issue No. 1 is liable to be decided in favour of workman Sh. Sher Bahadur Rai and against management which is accordingly decided.

Finding On Issue No. 2.

Which is as follows:-

“As in term of reference.”

So it includes in it following questions of determination:

1. Whether the demand of All India General Mazdoor Union(Regd.), New Delhi for reinstatement of 21 workers with back wages and all consequential benefits, is fair and legal? If yes, what reliefs the workmen are entitled to ?

This issue is relating to reinstatement of 21 workers with back wages and all consequential benefits and relief to workmen. After disposal of issue No.1 it has become crystal clear that no other workman except Sh. Sher Bahadur Rai, is entitled to any relief. Hence question of determination No.1 is accordingly decided. But what relief to be provided to workman Sh. Sher Bahadur Rai, is question of determination in the light of latest law of Supreme Court as well as this fact can not be over looked that management has sold his 76% shares to another company due to which retrenchment of workman took place in management of Bharti Airtel Services. But no retrenchment compensation u/s 25 f ID.Act has been provided to workman by management of Bharti Airtel.

So workman Sh. Sher Bahadur Rai is entitled for retrenchment compensation.

In the light of contentions and counter contentions I perused the pleadings of claim statement, written statement and rejoinder as well as evidence of parties on record and settled law of Supreme Court on the point of amount of Compensation.

It is admitted fact that no retrenchment compensation to workman has been provided by management. Which must be awarded even after pronouncement of judgment of Uma Devi by their lordship of Supreme Court. So workman in the instant case entitled for compensation as per settled law of Supreme Court in following cases:-

In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013)II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000/-(Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus “the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded.” In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus,” grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic.”

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a Casual Worker, thus, Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation to Workman/Claimant by Management.

Thus reference is liable to be decided in favour of Workman/Claimant and against Management. Which is accordingly decided and claim statement is partly allowed and management is directed to provide compensation of Rs. 50,000/- to workman/claimant, within two months after expiry of period of available remedy against this award.

Award is accordingly passed.

Dated : 19.08.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 1993.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिपार्टमेंट, भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद

में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 138/2006] को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-40012/4/2006-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 1993.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Ref. (CGITA) No. 138/2006] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom Department, Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 29.08.2016.

[No. L-40012/4/2006-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 4th August, 2016

Reference: (CGITA) No. 138/2006

1. The Chief General Manager,
Telecom Deptt., Bharat Sanchar Nigam Limited,
Gulbai Tekra Telephone Exchange Building, Gulbai Tekra,
Ahmedabad (Gujarat) – 380006
2. The Telecom District Manager,
BSNL, Ganj Market,
Palanpur (B.K.) – 385001

...First Party

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Nr. Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) – 380007

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/4/2006-IR (DU) dated 14.06.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the General Manager, Telecom Deptt., Khanpur, Ahmedabad in terminating the services of Sh. Mahendra Somabhai Vaghela, Casual Labour w.e.f. 01.12.2003 is legal and justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 14.06.2006. Both the parties were by registered post. Shri N.K.Trivedi appeared on behalf of the first part filing vakalatnama Ext. 3 on 27.02.2007 and Shri R.C. Pathak, President of Gujarat Rajya Ardhsarkari Audhyogik Karmachari Sangh, appeared and filed the authority that too on 27.02.2007 and also filed the statement of claim on 24.07.2007. First party submitted the written statement Ext. 9 on 18.12.2008. The second party

moved an application Ext. 10 on 02.07.2009 requesting the tribunal to direct the first party to submit documents list in the application. First party also filed the reply Ext. 12 to it on 04.03.2010 which has not been appeared to be pressed by the second party as the case has been listed for leading evidence by the second party since 02.08.2011. It is noteworthy that the advocate Shri R.C. Pathak representing the second party has been appearing in the tribunal on each and every date but refrained to lead evidence. Therefore on 05.04.2016, the second party advocate was giving the last opportunity to lead evidence but to no result. The advocate Shri N.K. Trivedi for the first party is present today. Thus it appears that the second party has no inclination to prosecute the case. Therefore the tribunal has no option but to dismiss the case in default of the second party.

2. Thus the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 1994.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिस, डिपार्टमेंट ऑफ पोस्ट, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 58/2010] को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-40012/33/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 1994.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Ref. (CGITA) No. 58/2010] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Superintendent of Post Office, Department of Post and their workman, which was received by the Central Government on 09.09.2016.

[No. L-40012/33/2008-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 22nd August, 2016

Reference: (CGITA) No. 58/2010

1. The Superintendent of Post Office,
D/o Post, Head Post Office,
Bharuch Division, Bharuch (Gujarat)
2. The Regional Director,
General Post Office, D/o Post,
Regional Office,
Vadodara (Gujarat)

... First Party

V/s.

Smt. Kundanben Arvindlal Amleshwarwala,
Block No. 4/1224, Narmada Apartments,
Bharuch

... Second Party

For the First Party : Shri P.M. Rami
For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/33/2008-IR (DU) dated 16.02.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Superintendent of Post Office, Bharuch Division in terminating the services of their workman Smt. Kundanben Arvindlal Amleshwarwala, w.e.f. 01.07.2007 is legal and justified? If not, to what relief the workman is entitled to?”

1. The reference dates back to 16.02.2009. The second party workman submitted his notarised statement of claim Ext. 3 on 09.03.2009 and the first party submitted the written statement Ext. 12 on 09.08.2011. Since then the second party has not been appearing for leading evidence. First party has also moved an application Ext. 14, 15, 16, 17, 18 & 19 successively for closure of evidence of the second party workman and to dismiss the reference. The second party workman did not turn up to oppose these applications; therefore it appears that the second party workman has not been willing to prosecute the case. Thus the tribunal has no option but to dismiss the reference in non-prosecution of the case by the second party.

2. Thus the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 1995.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ पोस्ट मास्टर, जीपीओ अहमदाबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 96/2010] को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-40011/1/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 1995.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Ref. (CGITA) No. 96/2010] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief Post Master, GPO, Ahmedabad and their workman, which was received by the Central Government on 09.09.2016.

[No. L-40011/1/2008-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 29th August, 2016

Reference: (CGITA) No. 96/2010

1. The Chief Post Master General,
D/o Post, Gujarat Circle, Khanpur,
Ahmedabad – 380001
2. The Sr. Superintendent of Post Offices,
D/o Post, Kheda Division,
Nadiad (Gujarat)

... First Party

V/s

Shri Harish Chandra Manilal Joshi,
Sutharwada Chakla, Kuwa Falia,
At & PO: Kapadwanj, Kheda

.....Second Party

For the First Party : Shri P.M. Rami
For the Second Party : Shri N.S. Shivade

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/1/2008-IR(DU) dated 24.09.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Chief Post Master General, Gujarat Circle/Senior Superintendent of Post Offices, Kheda Division, Nadiad in terminating the services of Shri Harish Chandra Manilal Joshi w.e.f. 01.07.1985 is legal and justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 24.09.2009. The second party workman submitted the vakalatpatra Ext. 7 of his advocate Shri N.S. Sivade on 01.04.2011 and statement of claim Ext. 12 on 09.12.2013. The first party also submitted the written statement Ext. 13 on 03.02.2014. Since then the second party has been absent and has also not lead evidence despite the applications Ext. 14, 15 & 16 on 16.12.2015, 25.04.2016 & 29.08.2016(today) moved by the first party advocate. Thus it appears that the second party workman has no willingness to prosecute the case. Therefore the tribunal has no option but to dismiss the case in non-prosecution of the case by the second party.
2. Thus the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 1996.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ पोस्ट मास्टर, जीपीओ अहमदाबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 191/2004] को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-40011/16/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 1996.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Ref. (CGITA) No. 191/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief Post Master, GPO, Ahmedabad and their workman, which was received by the Central Government on 09.09.2016.

[No. L-40011/16/98-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 31st August, 2016

Reference: (CGITA) No. 191/2004

The Chief Post Master,
GPO,
Ahmedabad (Gujarat) – 380001

...First Party

V/s

The Joint Action Committee of Recognized Unions,
GPO,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri Subhash G. Barot

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/16/98-IR (DU) dated 26.04.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the management of P&T is justified in declaring period from 21.06.97 to 27.06.97 as dies non vide order dated 14.07.1997 without making proper inquiry and further confirming it through order dated 07.01.1998? If not, what relief the workmen are entitled to?”

1. The reference dates back to 26.04.1999. The second party submitted the statement of claim Ext. 3 on 21.06.1999. The first party submitted the written statement Ext. 9 on 15.03.2001. Since then the second party did not prefer to lead evidence despite giving dozen of opportunities. Thus the tribunal has no option but to decide the reference for lack of evidence of the second party.
2. Thus the reference is decided that the management of P&T is justified in declaring period from 21.06.97 to 27.06.97 as dies non vide order dated 14.07.1997 without making proper inquiry and further confirming it through order dated 07.01.1998.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 1997.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरदर्शन केंद्र, अहमदाबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 994/2004] को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42011/41/1995-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 1997.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Ref. (CGITA) No. 994/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Doordarshan Kendra, Ahmedabad and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42011/41/1995-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd August, 2016

Reference: (CGITA) No. 994/2004

1. The Director,
Door Darshan Kendra,
Thaltej, Ahmedabad
2. The Station Engineer,
Door Darshan Kendra,
Dwarka, Jamnagar

...First Party

V/s

The General Secretary,
Association of Railway & Post Employees,
F/2, Allap Flats, Opp. Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) – 380007

...Second Party

For the First Party : Shri P.M. Rami

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/41/1995-IR(DU) dated 27/29.12.1995 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of management of Doordarshan Kendra, Ahmedabad and Station Engineer, Dwarka in not taking on duties/discontinuance/terminating the services of Shri Ashok K. Vayda, casual labour w.e.f. 12.02.1988, valid, just and legal? If not, to what relief the workman is entitled and what directions are necessary in the matter?”

1. The reference dates back to 27/29.12.1995. Both the parties has filed their statement of claim Ext. 13 on 11.03.1998 and written statement Ext. 18 on 21.12.2009. Since then the second party has not been leading evidence and the Government leader for the first party has been moving applications Ext. 29, 30, 31 & 32 repeatedly for closure of the reference but second party has not been paying attention to the applications moved by the first party. Therefore it appears that the second party has not been willing to prosecute the case. Thus the tribunal has no option but to dismiss the reference in non-prosecution of the case by the second party.

2. Thus the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 1998.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिपार्टमेंट, अहमदाबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 568/2004] को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-40012/80/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 1998.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Ref. (CGITA) No. 568/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Telecom Department, Ahmedabad and their workman, which was received by the Central Government on 09.09.2016.

[No. L-40012/80/2003-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 4th August, 2016

Reference: (CGITA) No. 568/2004

1. The Sub-Divisional Officer,
Telegraphs, Telecom Deptt., Deesa (B.K.) – 385535
2. The Chief General Manager,
Telecom Deptt., Bharat Sanchar Nigam Limited, Khanpur,
Ahmedabad (Gujarat) – 380001
3. The Telecom District Manager,
BSNL, Ganj Market,
Palanpur (B.K.) – 385001

...First Party

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Nr. Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) – 380007

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/80/2003-IR (DU) dated 31.07.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Association of Railway & Post Employees, Ahmedabad for reinstatement of Shri Sanjaykumar Nageshwar Prasad, Ex. Casual Labour by the management of Telecom District Manager, Palanpur/SDO(T), Deesa, BSNL is proper and justified? If so, to what relief the concerned workman is entitled for and since when?”

1. The reference dates back to 31.07.2003. Both the parties were served by registered notices. First party submitted the vakalatpatra Ext. 3 on 06.11.2003. Despite service even after a lapse of 13 years, the second party has not submitted the statement of claim. The advocate Shri N.K. Trivedi for the first party is present today. Thus it appears that the second party has no inclination to prosecute the case. Therefore the tribunal has no option but to dismiss the case in default of the second party.
2. Thus the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 1999.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिपार्टमेंट, अहमदाबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 569/2004] को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-40012/81/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 1999.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Ref. (CGITA) No. 569/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Telecom Department, Ahmedabad and their workman, which was received by the Central Government on 09.09.2016.

[No. L-40012/81/2003-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 4th August, 2016

Reference: (CGITA) No. 569/2004

1. The Sub Divisional Officer,
Telegraphs, Telecom Deptt., Deesa (B.K.) – 385535
2. The Chief General Manager,
Telecom Deptt., Bharat Sanchar Nigam Limited, Khanpur,
Ahmedabad (Gujarat) – 380001
3. The General Manager,
Telecom Deptt., Palanpur Telecom District,
Joravar Palace, Palanpur (B.K.) – 385001

...First Party

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Nr. Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) – 380007

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/81/2003-IR (DU) dated 31.07.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of General Manager, Telecom Deptt, Palanpur/SDO(T), Deesa, BSNL in terminating the services of Sh. Keshabhai Jagmalbhai Parmar without following the due procedure is legal, proper and justified? If not, to what relief the concerned workman is entitled to and since when?”

1. The reference dates back to 31.07.2003. Both the parties were served by registered notices. First party submitted the vakalatpatra Ext. 3 on 12.11.2003. Despite service even after a lapse of 13 years, the second party has not submitted the statement of claim. The advocate Shri N.K. Trivedi for the first party is present today and he also submitted the written statement Ext. 4 on 29.08.2005. Thus it appears that the second party has no inclination to prosecute the case. Therefore the tribunal has no option but to dismiss the case in default of the second party.
2. Thus the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2000.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल सैंपल सर्वे आर्गेनाइजेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ सं. 1/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42012/101/2009-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2000.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the National Sample Survey Organization and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42012/101/2009-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Present: Sri Kewal Krishan, Presiding Officer

ID No. 1/2010

Registered on 05.04.2010

Sh. Harish Kumar, S/o Sh. Bhawani Singh,
R/o Village Shilah Kipper, Post Office Dudar,
Tehsil Sadar, District Mandi (H.P.)

...Applicant

Versus

1. The Deputy Director of National Sample Survey Organization, field Operation Division, Bosewell, Shimla-171005(H.P.).
2. The Office Incharge, National Sample Survey Organization, Sub-Regional Office, Jawahar Nagar, Mandi, District Mandi (H.P.)

...Respondents

APPEARANCES

For the workman	-	Sh. Abhimanyu Sharma, Adv.
For the management	-	Sh. Kuldeep Rathod, Adv.

AWARD

Passed on:- 11.08.2016

Vide Order No.L-42012/101/2009-IR(DU), dated 19.03.2010 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Deputy Director General, National Sample Survey Organization, Shimla in terminating the services of Sh. Harish Kumar w.e.f. 25/04/2009 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, workman submitted statement of claim, pleading that he was engaged as Peon on 05.12.2007 by the respondent-management and he was discharging his functions as per direction given. His services were arbitrarily terminated on 25.04.2009. That he worked continuously for 324 days except holidays and thus completed 240 days in a calendar year.

During the conciliation proceedings, the respondent-management pleaded that workman did not work for the month of March, April, November and December 2008, and during that period, Yash Kumar and Kamal Kishore worked which is false. Yash Kumar has given an affidavit in this respect, whereas Kamal Kishore was running a shop at Paddal, Mandi, during November and December 2008. Both of them did not work for the management.

That Smt. Meera Devi and Smt. Suman Kumari who was working with the workman have given their affidavits. That he made entries in the diary and dispatch register from 5th December 2007, to 25th April, 2009 and the name of Sh. Yash Kumar and Kamal Kishore has been wrongly mentioned. That his services were terminated in violation of provisions of the Act and he be reinstated in service with full back wages.

Respondent-management filed written reply, pleading that the workman was engaged as daily rated worker on 5th Dec. 2007 as a stop gap arrangement on the retirement of Sh. Govind Ram, Peon, and he worked for the following days:-

S.No.	Month	No. of days
1	Dec.2007	16
2	Jan.2008	21
3	Feb.2008	23
4	May 2008	21
5	June 2008	18
6	July 2008	23
7	Aug.2008	20
8	Sep.2008	22
9	Oct.2008	20
10	Jan.2009	20
11	Feb.2009	19
12	March 2009	18.5
13	April 2009	13.5
	Total	255

That he was not engaged in the month of March, April, November and December 2008, and was not paid wages for that period. That he did not complete 240 days in a calendar year and there is no violation of any provisions of the Act.

Parties were given opportunity to lead evidence.

The workman Sh. Harish Kumar, has appeared in the witness box and filed his affidavit and also examined Sh. Yash Kumar.

Sh. Harish Kumar, workman has reiterated his case in his affidavit as set out in the claim petition. Sh. Yash Kumar has deposed in his affidavit that he did not work with the management and he was a driver of M/s Namdhari Auto Engineering from September 2007 to November 2009.

On the other hand, respondent-management filed affidavit of Sh. Ram Krishna and also examined Sh. G.C. Garg and Sh. Baldev Raj Sharma.

In his affidavit Sh. Ram Krishana deposed about the days for which the workman has worked and further deposed that the workman was posted as a daily rated worker. Sh. G.C. Garg has deposed that he was working as Assistant Director and employed Sh. Kamal Kishore from 1.11.2008 to 31.12.2008. He produced on record the muster roll and the receipt of salary for the said period.

Sh. Baldev Raj Sharma, was posted as Senior Superintendent and deposed that he engaged Sh. Yash Pal from March 2008 to April 2008 on daily wages basis. He brought the attendance register and receipt for payment of wages.

I have heard. Sh. Abhimanyu Sharma for the workman and Sh. Kuldeep Rathod for the management and perused the file carefully.

It was argued by the learned counsel for the workman that the workman continuously worked from 05.12.2007 to 25.04.2009 as Peon and his services were arbitrarily terminated on 25.04.2009 in violation of the provisions of the Act and he be reinstated in service.

I have considered the contention raised by the learned counsel.

It is admitted by the respondent-management that the workman was employed as a daily rated worker for the period in question but actually he did not work during the month of March and April 2008, and November and December 2008.

It is not disputed that the services of the workman were disengaged on 25.4.2009. Therefore, the period of continuous service is to be calculated for the calendar year preceding 25.04.2009.

Workman has come out with the case that he actually worked for the month of March, April 2008; and November, December 2008 and he has also examined Sh. Yash Pal to prove the fact, who has said that he did not work in the month of March and April 2008. But the respondent-management has examined Sh. Baldev Raj Sharma, who was posted as Senior Superintendent and it was he who engaged Sh. Yash Pal for the said period. At the time his examination, the original record relating to attendance and payment of wages was produced and he produced the copy Exb.R2 and R4. In view of his statement and the record produced by him, the testimony of Sh. Yash Pal carries no weight. If the workman was engaged during the month of March and April 2008 and November and December 2008, it was for him to prove the same by showing that he received the wages from the management for the said period, but no evidence has come on record, showing that the workman has received the wages from the respondent-management for March, April 2008; and November, December 2008 during which period one Yash Pal and Kamal Kishore were engaged by Sh. G.C. Garg and Sh. Baldev Raj Sharma who have been examined by the respondent-management and there is no reason to disbelieve their statements. Thus, the workman did not work with the respondent-management during the month of March, April 2008 and November, December 2008. The period for which the workman has worked with the respondent-management has been given in para one of the written statement and reproduced above. The period, he worked with the respondent-management from May 2008 to April 2009 excluding the period of March, April 2008 and November, December 2008, comes to only 195 days as the preceding calendar year is to be counted from April 2008 and during the preceding calendar year, he did not complete 240 days and as such, he was not entitled to get any retrenchment compensation as required under Section 25F of the Act.

The workman has relied on the affidavit Exb.A5 of Smt. Meera Devi and Smt. Suman Kumari but, these cannot be read in the evidence as said persons were not examined in Court. It is again pleaded that the workman was doing the work of diary and dispatch register(Exb.A3), which also do not advance the case of the workman in any way to establish that he worked in the month of March, April 2008 and November, December 2008.

Thus, the workman has failed to prove that he continuously worked for 240 days with the respondent-management in a calendar year preceding the date of his termination i.e. 25.04.2009.

In view of the above discussions, it cannot be said that disengagement of the services of the workman is illegal and unjustified.

In result, the reference is answered, holding that the action of the respondent-management in disengaging the services of the workman w.e.f. 25.04.2009 is legal and justified and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2001.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिस, रोहतक डिवीजन के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 16/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2001.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 16/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

LCA No. 16/2015

Registered on 08.05.2015

Sh. Satvir Singh S/o Sh. Ramjas, Resident of Village and
Post Office Majra (Dubaldhan), Tehsil Beri and District Jhajjar

...Petitioner

Versus

The Senior Superintendent of Post Offices, Rohtak, Division Rohtak

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on:-18.08.2016

Sh. Satvir Singh, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947(hereinafter called the 'Act'), claiming 10 months leave encashment; on the averments that he was appointed as Gramin Dak Sewak on 26.03.2002 and was retired on 31.12.2009. That respondent-management is an 'industry' and as per letter 09.01.1992 and 14.05.2007 he is entitled to encashment of the earned leave and the same be calculated and paid to him.

The respondent-management filed written statement, controverting the averments and pleaded that as per rules, there is no provision for accumulation of leave and as such, the appellant was not entitled to any encashment earned leave.

Partied did not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that Gramin Dak Sewak is entitled to encashment of earned leave for 10 days and as such, the applicant is entitled to get the payment.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

“The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006,(Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees’ w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006.”

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*
- III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days.”*

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the deceased was governed by Conduct and Engagement Rules and now known as “Gramin Dak Sewaks(Conduct and Engagement) Rules 2011” and Rule 7 thereof deals with the leave and read as follow:-

“The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
- (b) Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave.”*

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Thus, a perusal of this rule show that Gramin Dak Sewak is entitled to only get paid leave @ 20 days in a year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2002.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिस, रोहतक डिवीजन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 20/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2002.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 20/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sri Kewal Krishan, Presiding Officer**LCA No. 20/2015**

Registered on 08.05.2015

Sh. Ram Mehar, GDS-MD, resident of Village and
Post Office Palra, Tehsil Beri, District Jhajjar

...Petitioner

Versus

The Senior Superintendent of Post Offices, Rohtak, Division Rohtak

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 18.08.2016

Sh. Ram Mehar, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter called the 'Act'), claiming leave encashment for 10 months; on the averments that he was appointed as GDS on 19.07.1979 and retired on 31.12.2012. That the respondent-management is a 'industry' and as per letters dated 09.01.1992 and 14.05.2007, he is entitled to encashment of the accrued leave.

The respondent-management filed written reply, pleading that "Gramin Dak Sewaks (Conduct and Engagement) Rules 2011", do not permit encashment earned leave and as such, no amount can be awarded to the applicant.

Parties did not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that Gramin Dak Sewak is entitled to encashment of earned leave for 10 days and as such, the applicant is entitled to get the payment.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006,(Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even

number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006."

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*
- III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days."*

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the deceased was governed by Conduct and Engagement Rules and now known as "Gramin Dak Sewaks (Conduct and Engagement) Rules 2011" and Rule 7 thereof deals with the leave and read as follow:-

"The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
- (b) Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave."*

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Thus, a perusal of this rule show that Gramin Dak Sewak is entitled to only get paid leave @ 20 days in a year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2003.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिसेस, रोहतक डिवीजन के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 46/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2003.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 46/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sri Kewal Krishan, Presiding Officer**LCA No. 46/2015**

Registered on 22.02.2016

Smt. Bhateri Devi W/o Late Sh. Dayan and Village and
Post Office Mandi, District Panipat

...Petitioner

Versus

The Senior Superintendent of Post Offices, Karnal, Division Karnal

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 18.08.2016

Smt. Bhateri Devi, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947(hereinafter called the 'Act'), claiming 8 months pay in lieu of accrued earned leave; on the averments that her husband late Sh. Daya Nand was appointed as EDA, during the year 1984 and expired on 07.06.2003. That the Gramin Dak Sewaks(Conduct and Engagement)Rules 2011(hereinafter called the 'Rules')do not permit leave encashment but in view of the Section 25-J of the Act and office memo dated 09.01.1992 and 14.05.2007, these rules are inapplicable and her husband was entitled to get leave encashment for 8 months pay which be calculated and paid to her.

The respondent-management filed written reply, pleading that the rules, governing the service conditions specifically bar leave encashment and as such, the husband of the appellant was not entitled to any amount by way of encashment of earned leave.

Parties did not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that Extra Departmental Agent is entitled to encashment of earned leave for 10 days and as such, the applicant being the widow of Sh. Daya Nand, is entitled to get the payment.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006,(Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006."

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*
- III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days.”*

A perusal of both the letters reveals that leave encashment is allowed where there is a provision of accumulation of leave.

It is not disputed that services of the deceased was governed by Conduct and Engagement Rules and now known as “Gramin Dak Sewaks(Conduct and Engagement)Rules 2011” and Rule 7 thereof deals with the leave and read as follow:-

“The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
- (b) Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave.”*

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Again there is Director General instructions at the foot note and Instruction No.1 read as follow:-

“(1) Leave of 10 days for every half year-Extra-Departmental Agent may be granted paid leave at the rate of 10 days for every half year, but there shall be no provision of carry forward or encashment of this leave. This will be implemented with effect from half year beginning from 1st July, 1998.”

Thus, a perusal of this rule show that extra departmental agent is entitled to only get paid leave @ 10 days for every half year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट ऑफ पोस्ट ओफिसेस, रोहतक डिवीजन के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 47/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2004.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 47/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sri Kewal Krishan, Presiding Officer**LCA No. 47/2015**

Registered on 22.02.2016

Sh. Sham Sunder S/o Sh. Ramditta, Resident of House No. 27,
Noorwala, Panipat

...Petitioner

Versus

The Superintendent of Post Offices, Karnal, Division Karnal

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 18.08.2016

Sh. Sham Sunder, workman has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947(hereinafter called the 'Act'), claiming 10 months pay in lieu of accrued earned leave; on the averments that he was appointed as EDA on 08.12.1979 and he has retired on having superannuated on 30.04.2011. The Gramin Dak Sewaks(Conduct and Engagement)Rules 2011(hereinafter called the Rules)do not permit leave encashment in lieu of accrued earned leave but the same is overridden by Section 25-J of the Act and office memo dated 09.01.1992 and 14.05.2007. That he is entitled to get leave encashment for 10 months pay which be calculated and paid to him.

The respondent-management filed written statement, controverting the averments and pleaded that as per rules, there is no provision for accumulation of leave and as such, the appellant was not entitled to encashment of earned leave.

Parties did not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that Extra Departmental Agent is entitled to encashment of earned leave for 10 months and as such, the applicant is entitled to get the payment.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

“The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006,(Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006.”

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*
- III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days.”*

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the deceased was governed by Conduct and Engagement Rules and now known as “Gramin Dak Sewaks(Conduct and Engagement)Rules 2011” and Rule 7 thereof deal with the leave and read as follow:-

“The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
- (b) Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave.”*

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Again there is Director General instructions at the foot note and Instruction No.1 read as follow:-

“(1) Leave of 10 days for every half year-Extra-Departmental Agent may be granted paid leave at the rate of 10 days for every half year, but there shall be no provision of carry forward or encashment of this leave. This will be implemented with effect from half year beginning from 1st July, 1998.”

Thus, a perusal of this rule show that extra departmental agent is entitled to only get paid leave @ 10 days for every half year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government as required under Section 33(C)(4) of the Act for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2005.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ओफिसेस, रोहतक डिवीजन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 59/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2005.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 59/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:** Sri Kewal Krishan, Presiding Officer**LCA No. 59/2015**

Registered on 22.02.2016

Sh. Mohinder Lal S/o Late Sh. Damodar Dass, Resident of Village
and Post Office Bhurewala, Tehsil Naraingarh, District Ambala

...Petitioner

Versus

The Superintendent of Post Offices, Ambala, Division Ambala

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 18.08.2016

Sh. Mohinder Lal, son of Late Sh. Damodar Dass, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947(hereinafter called the 'Act'), claiming 8 months pay in lieu of accrued earned leave; on the averments that his father was appointed as GDS-BPM on 30.09.1963 and retired on 14.03.2001 on attaining superannuation. The Gramin Dak Sewaks(Conduct and Engagement)Rules 2011(hereinafter called the 'Rules')do not permit leave encashment in lieu of accrued earned leave but the same is overridden by Section 25-J of the Act and office memo dated 09.01.1992 and 01.01.1974. That his father was entitled to get leave encashment for 8 months pay which be calculated and paid to him.

The respondent-management filed written statement, controverting the averments and pleaded that as per rules, there is no provision for accumulation of leave and as such, the appellant was not entitled to any encashment of earned leave.

Parties do not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that Gramin Dak Sewak is entitled to encashment of earned leave for 10 months and as such, the applicant is entitled to get the payment.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006,(Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006."

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*
- III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days.”*

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the deceased was governed by Conduct and Engagement Rules and now known as “Gramin Dak Sewaks(Conduct and Engagement)Rules 2011” and Rule 7 thereof deal with the leave and read as follow:-

“The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
- (b) Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave.”*

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Thus, a perusal of this rule show that Gramin Dak Sewak is entitled to only get paid leave @ 20 days in a year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2006.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिस, रोहतक डिवीजन के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 62/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2006.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 62/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

LCA No. 62/2015

Registered on 22.02.2016

Smt. Kanta Rani W/o Late Sh. Harmesh Kumar, Resident of Village
and Post Office Baragaon, Tehsil Naraingarh, District Ambala

...Petitioner

Versus

The Superintendent of Post Offices, Karnal, Division Karnal

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 22.08.2016

Smt. Kanta Rani, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter called the 'Act'), claiming 10 months pay in lieu of accrued earned leave; on the averments that her husband was appointed as EDA-BPM, who expired on 25.09.2007. The Gramin Dak Sewaks (Conduct and Engagement) Rules 2011(hereinafter called the 'Rules') do not permit leave encashment in lieu of accrued earned leave but the same is overridden by Section 25-J of the Act and office memo dated 09.01.1992 and 01.01.1974. That her husband was entitled to get leave encashment for 10 months pay which be calculated and paid to her.

The respondent-management filed written statement, controverting the averments and pleaded that as per rules, there is no provision for accumulation of leave and as such, the husband of the appellant was not entitled to encashment of earned leave.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that Extra Departmental Agent is entitled to encashment of earned leave for 10 months and as such, the applicant being the widow of Sh. Harmesh Kumar, is entitled to get the payment.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006, (Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006."

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*

III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days.”

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the deceased was governed by Conduct and Engagement Rules and now known as Gramin Dak Sewaks(Conduct and Engagement)Rules 2011 and Rule 7 thereof deals with the leave and read as follow:-

“The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) **Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or**
- (b) **Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave.”**

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Again there is Director General instructions at the foot note and Instruction No.1 read as follow:-

“(1) Leave of 10 days for every half year-Extra-Departmental Agent may be granted paid leave at the rate of 10 days for every half year, but there shall be no provision of carry forward or encashment of this leave. This will be implemented with effect from half year beginning from 1st July, 1998.”

Thus, a perusal of this rule show that extra departmental agent is entitled to only get paid leave @ 10 days for every half year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2007.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिस, रोहतक डिवीजन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 12/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2007.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 12/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

LCA No. 12/2014

Registered on 17.03.2015

Sh. Jagdish S/o Sh. Azad Singh, Postman with
Mukhya Dak Ghar (MDG), Jhajjar, District Jhajjar

...Petitioner

Versus

The Senior Superintendent of Post Offices, Rohtak, Division Rohtak

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 18.08.2016

Sh. Jagdish, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947(hereinafter called the 'Act'), claiming 10 months leave encashment; on the averments that he was rendered service as Branch Post Master from 10.05.1990 to 12.05.2011 and thereafter, he was selected as Postman. That he was paid severance allowance but, was not paid 10 months leave encashment. That the respondent-management is an 'industry' and in view of the letter dated 09.01.1992 and 14.05.2007, he is entitled to leave encashment. That the amount be calculated and paid to him.

The respondent-management filed written statement, controverting the averments and pleaded that as per rules, there is no provision for accumulation of leave and as such, the appellant is not entitled to any encashment of earned leave.

Parties did not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that "Gramin Dak Sewak" is entitled to encashment of earned leave for 10 months and as such, the applicant is entitled to get the payment.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006,(Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006."

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) *The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) *The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*

III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days.”

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the applicant was governed by Conduct and Engagement Rules and now known as “Gramin Dak Sewaks(Conduct and Engagement)Rules 2011” and Rule 7 thereof deal with the leave and read as follow:-

“The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) **Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or**
- (b) **Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave.”**

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Thus, a perusal of this rule show that Gramin Dak Sewak is entitled to only get paid leave @ 20 days in a year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2008.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिसेस, रोहतक डिवीजन के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 15/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2008.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 15/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

LCA No. 15/2014

Registered on 17.03.2015

Sh. Dalbir Singh S/o Sh. Manphool Singh, resident of
Village and PO Dhakla, Tehsil and District Jhajjar

...Petitioner

Versus

The Senior Superintendent of Post Offices, Rohtak, Division Rohtak

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 18.08.2016

Sh. Dalbir Singh, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947(hereinafter called the 'Act'), claiming 10 months pay in lieu of accrued earned leave; on the averments that he was appointed as GDS Chowkidar in 1982 and since the respondent-department is an 'industry', he is entitled to leave encashment.

The respondent-management filed written reply, pleading, that the applicant was engaged as a part time casual labour Chowkidar and his services were disengaged on 21.07.2011 and was granted temporary status on 28.03.2013 and he is not entitled to leave encashment of 10 months.

Parties did not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that industrial employees are entitled to leave encashment and since the respondent-management is an 'industry', the workman is entitled to leave encashment for 10 months.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006, (Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006."

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*
- III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days."*

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the deceased was governed by Conduct and Engagement Rules and now known as "Gramin Dak Sewaks(Conduct and Engagement) Rules 2011" and Rule 7 thereof deal with the leave and read as follow:-

"The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) *Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
- (b) *Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave."*

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10."

Thus, a perusal of this rule show that Gramin Dak Sewak is entitled to only get paid leave @ 20 days in a year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2009.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिसेस, रोहतक डिवीजन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 18/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2009.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 18/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

LCA No. 18/2014

Registered on 17.03.2015

Sh. Sita Ram S/o Sh. Mam Raj, Resident of House No. 2161/20,
Rajiv Nagar, Rohtak

...Petitioner

Versus

The Senior Superintendent of Post Offices, Rohtak, Division Rohtak

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 18.08.2016

Sh. Sita Ram, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter called the 'Act'), claiming 10 months leave encashment; on the averments that he was appointed as GDS Mali, in the year 1985. That the respondent-management is an 'industry' and he is entitled to get leave encashment for 10 months. Gramin Dak Sewaks (Conduct and Engagement) Rules 2011 (hereinafter called the 'Rules') do not permit leave encashment in lieu of accrued earned leave but the same is overridden by Section 25-J of the Act and office memo dated 09.01.1992 and 14.05.2007. That he is entitled to get leave encashment for 10 months pay which be calculated and paid to him.

The respondent-management filed written statement, controverting the averments and pleaded that as per rules, there is no provision for accumulation of leave and as such, the appellant is not entitled to any encashment of earned leave.

Parties did not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that Gramin Dak Sewak is entitled to encashment of earned leave for 10 months and as such, the applicant is entitled to get the payment.

The letter dated 14.05.2007, which is in All India Services Law Journal XI-2007(3) read as follow:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006, (Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006."

The letter dated 9th January, 1992 read as follow:-

The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*
- III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days."*

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the applicant was governed by Conduct and Engagement Rules and now known as "Gramin Dak Sewaks (Conduct and Engagement) Rules 2011" and Rule 7 thereof deals with the leave and read as follow:-

"The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
- (b) Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave."*

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Thus, a perusal of this rule show that Gramin Dak Sewak is entitled to only get paid leave @ 20 days in a year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2016

का.आ. 2010.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेंट ऑफ पोस्ट ऑफिसेस, रोहतक डिवीजन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ एलसीए सं. 21/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.09.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 19th September, 2016

S.O. 2010.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. LCA No. 21/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Rohtak Division and their workman, which was received by the Central Government on 09.09.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

LCA No. 21/2014

Registered on 17.03.2015

Sh. Prem Chand S/o Sh. Hawa Singh, resident of
Jawahar Bagh, District Jhajjar

...Petitioner

Versus

The Senior Superintendent of Post Offices, Rohtak, Division Rohtak

...Respondent

APPEARANCES :

For the workman : Sh. R.P. Mehra, Adv.

For the Management : Sh. Sanjeev Sharma, Adv.

AWARD

Passed on : 18.08.2016

Sh. Prem Chand, has filed this application under Section 33(C)(2) of the Industrial Disputes Act, 1947(hereinafter called the 'Act'), claiming leave encashment for 10 months; on the averments that he was appointed as GDS Chowkidar in the year 1992. That the respondent-department is an 'industry', and he is entitled to leave encashment.

The respondent-management filed written reply, pleading, that the applicant was engaged as a part time Chowkidar and his services were disengaged on 21.07.2011 and was granted temporary status on 28.03.2013 and he is not entitled to leave encashment of 10 months.

Parties did not lead any evidence.

I have heard Sh. R.P. Mehra for the workman and Sh. Sanjeev Sharma for the management.

Sh. R.P. Mehra, learned counsel for the appellant, carried me through the letter dated 14.05.2007 and 9th January, 1992 and submitted that industrial employees are entitled to leave encashment and since the respondent-management is an 'industry', the workman is entitled to leave encashment for 10 months.

The letter dated 11.05.2007, which is All India Services Law Journal XI-2007(3) read as follow:-

"The undersigned is directed to refer to Department of Personnel and Training O.M. No.14028/2/2003-Estt.(L), dated 7.11.2006,(Published in SLJ of June, 2006 as Sl. No.34) forwarded vide MOD OM of even number dated 13.11.2006 on the above subject. It is clarified that the accumulation and encashment limit of earned leave is raised to 300 days from 120 days in respect of industrial employees' w.e.f. 7.11.2006. That is, as industrial employee who is already having 120 days of earned leave as on 1.1.2006 is eligible to get a credit of the leave earned by him/her during the year 2006, subject to a ceiling of 30 days, on 1.1.2007. Thus the total earned leave at his/her credit can become 120+30=150 days as on 1.1.2007 in case he/she has earned the maximum of 30 days of E.L. during 2006."

The letter dated 9th January, 1992 read as follow:-

"The undersigned is directed to refer to this Department OM No.P-12012/1/79/LU dated 22.7.1981 and you say that in pursuance of the Award given by the Board of Arbitration(JCM) in CA, Reference No.2 of 1989, the President is pleased to decide that the leave entitlement of Industrial Employees in Central Government Departments other than Railways shall be modified as follow:-

- I) The existing condition of 240 days service for grant of any leave with wages to the Industrial employees stands removed; provided that if in any year an employee is not in service for the year, his entitlement to leave with respect to that year shall be in proportion to the period of his service in that year.*
- II) The restriction on carrying forward leave at the credit of an industrial employee beyond 30 days stands removed;*
- III) The limit of total accumulation of earned leave for the Industrial Employees shall be 120 days."*

A perusal of both the letters reveals that leave encashment is allowed where there is a provision for accumulation of leave.

It is not disputed that services of the workman was governed by Conduct and Engagement Rules and now known as "Gramin Dak Sewaks(Conduct and Engagement)Rules 2011" and Rule 7 thereof deals with the leave and read as follow:-

"The Sevaks may be granted paid leave at the rate of 20 days in a year without accumulation or as may be determined by the Government, from time to time:

Provided that-

- (a) Where a Sevak falls to resume duty on the expiry of the maximum period of leave admissible and granted to him, or*
- (b) Where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave."*

He shall unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10.

Thus, a perusal of this rule show that Gramin Dak Sewak is entitled to only get paid leave @ 20 days in a half year and there is no provision to carry forward or encashment of this leave. In view of the specific law enacted, the letters dated 14.5.2007 and 9th January, 1992 has no application to the present case wherein the rules do not provide for the accumulation of leave or encashment thereof.

In result, there is no merit in this case and the same is dismissed.

Let hard and soft copy of the award be sent to the Central Government for further necessary action as required under Section 33(C)(4) of the Act.

KEWAL KRISHAN, Presiding Officer